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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 302. 69.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED MAY 26, 1900.

(17,289.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 308.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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1 United States of America, fifth judicial circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1898, and held in the court room of said court in the city of New Orleans.

Before the honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit, the honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the honorable Charles Parlange, United States district judge for the eastern district of Louisiana.

THE INTERSTATE COMMERCE COMMISSION, appellant, *vs.* THE WESTERN & ATLANTIC RAILROAD COMPANY, The Louisville & Nashville Railroad Company, et als.	No. 750.

Be it remembered that heretofore, to wit, on the 29th day of July, 1898, a transcript of the record of the above-styled cause from the circuit court of the United States for the northern district of Georgia was filed in the office of the clerk of said United States circuit court of appeals in the words and figures following, to wit:

1 In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE WESTERN AND ATLANTIC RAILROAD COMPANY; The Louisville and Nashville Railroad Company; The Nashville, Chattanooga and St. Louis Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway; The Cincinnati Southern Railway Company, and S. M. Felton, receiver.	In equity, No. 524.

To the circuit court of the United States, sitting in equity, within and for the northern district of Georgia:

Your petitioner, the Interstate Commerce Commission, which was created and established and now exists under and by virtue of an act of Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, as amended by an act approved March 2, 1889, and as amended by an act approved February 10, 1891, and as amended by an act approved February 11, 1893,

HUMBLY COMPLAINING,

showeth to your honors that the Western and Atlantic Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, having its principal office at Atlanta,

in the said State of Georgia; that the Louisville and Nashville Railroad Company is a corporation created, chartered, and existing under
2 and by virtue of the laws of the State of Kentucky, having its principal office at Louisville, in the said State of Kentucky; that the Nashville, Chattanooga and St. Louis Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Tennessee, Alabama, Georgia, and Kentucky, having its principal office at Nashville, in the State of Tennessee; that the Cincinnati, New Orleans and Texas Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, having its principal office at Cincinnati, in the said State of Ohio, and the defendant, S. M. Felton, is the receiver thereof; that the Cincinnati Southern Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, having its principal office at Cincinnati, in said State of Ohio.

That the said corporate defendants were at the time of the committing of the grievances hereinafter specially mentioned, and still are, common carriers, engaged in the transportation of persons and property by their several lines of railroad, under a common control, management, or arrangement for continuous carriage or shipment through several of the the United States, and particularly were the said defendants then engaged in the said business from the city of Cincinnati, in the State of Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta, in the State of Georgia, and as such common carriers were, during all the time aforesaid, and still are, subject to the provisions of the said act entitled "An act to regulate commerce," and said amendments thereto.

That the said corporate defendants were heretofore, to wit, on the 22d day of October, 1891, duly impleaded in a controversy not requiring a trial by jury, as provided for in the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission, upon the petition of L. N. Trammell, Allen Fort, Virgil Powers, constituting and composing the railroad commission of Georgia, duly and legally created by the laws of the State of Georgia, for an alleged violation on the part of the said defendants of the provisions of the said act entitled "An act to regulate commerce," as at large and more fully appears in and by said petition on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit A; that a copy of said petition, duly attested by the secretary of the said Interstate Commerce Commission, under the seal of said Commission, was duly forwarded by said Interstate Commerce Commission to each of the defendants aforesaid, as required by the thirteenth section of the said act.

That thereafterwards, to wit, on the 9th day of November, 1891, the Louisville and Nashville Railroad Company filed its answer to the said petition, as at large and more fully appears in and by the said answer on file in the office of the said Commission, a copy whereof is
3 hereunto annexed and made a part of this petition, the same being marked Exhibit B.

That thereafterwards, to wit, on the 16th day of November, 1891, the Nashville, Chattanooga and St. Louis Railway Company, in its own name

and as sole lessee of the Western and Atlantic Railroad, filed answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit C.

That thereafterwards, to wit, on the 23d day of November, 1891, the Western and Atlantic Railroad Company filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit D.

That thereafterwards, to wit, on the 18th day of January, 1892, the Cincinnati, New Orleans and Texas Pacific Railway Company filed its answer to the said petition, as at large and more fully appears in and by said answer on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit E.

That thereafterwards, the said cause being at issue upon the pleadings aforesaid, duly came on for investigation and hearing before the said Interstate Commerce Commission, at a special session thereof, duly and legally assembled for that purpose at the city of Atlanta, in the State of Georgia, on the 24th day of March, 1892, whereof all the parties had due and sufficient notice, when said complainants, the Georgia Railroad Commission, as well as the said defendants, the Western and Atlantic Railroad Company and the Louisville and Nashville Railroad Company, duly appeared by their respective officers and attorneys, and thereupon the said cause proceeded to hearing and determination.

That thereafterwards, to wit, on the 3rd day of September, 1892, the Louisville and Nashville Railroad Company, by its attorney, Ed. Baxter, filed a petition requesting a continuance of the said cause brought by the said Georgia Railroad Commission, as at large and more fully appears in and by said petition on file in the office of the said Commission, a copy whereof is hereunto annexed and made part of this petition, the same being marked Exhibit F.

That thereafterwards, to wit, on the 19th day of October, 1892, the said Commission duly formulated an order denying the said petition of the Louisville and Nashville Railroad Company, hereinabove referred to as a part hereof, as at large and more fully appears in and by said order on file in the office of the said Commission, a copy whereof is hereunto annexed and made part of this petition, the same being marked Exhibit G.

That at the said hearing it was made to appear to the satisfac-
4 tion of the said Commission that the said defendants had violated the provisions of the said act entitled "An act to regulate commerce" in certain respects, as was stated in the said petition herein referred to as a part hereof, and thereupon, on the 11th day of November, 1892, the said Commission duly and legally determined the matters and things in controversy and at issue between the said parties and made a report in writing thereon, which included the findings of fact upon which the conclusions of the said Commission were based, as at large and more fully appears in and by the said report of the determination of the said Commission, on file in the office of the said Commission, a copy whereof is

hereunto annexed and made a part of this petition, the same being marked Exhibit H.

That thereafterwards and forthwith, upon the determination of the said cause as aforesaid, the said Commission duly formulated an order and notice in relation to the matter and things stated and charged in the said petition, based upon the findings and determination of the said Commission with respect thereto agreeably to the requirements of the statute in such cases made and provided, which said order now remains in full force and effect, never having been vacated, set aside, altered, modified, or changed in any respect whatever, and is now on file in the office of the said Commission, a copy whereof is hereunto annexed and made a part of this petition, the same being marked Exhibit I.

That thereafterwards, to wit, on the 11th day of November, 1892, the said Commission, agreeably to the provisions of the law in that regard, duly caused a properly authenticated copy of its said report in respect to the matters at issue in said complaint as aforesaid, together with the order and notice aforesaid, to be delivered to the said defendants, and thereupon the petitioner shows that it has not been made to appear to the said Commission that, although more than twenty days have elapsed since the service of the said order upon the said defendants, the said defendants have ceased and desisted from the violations of law set forth in the said report and order of the said Commission, but on the contrary thereof the said defendants, unmindful of their duty and of the decision and determination of the said Commission, as stated in its report aforesaid, have, through their officers, servants, and attorneys, wholly disregarded and set at naught the authority of the said Commission in that regard and have willfully and knowingly violated and disobeyed the said order and notice as hereinbefore set forth, hitherto neglected and refused, and still do neglect and refuse to comply with the same, in this, that the defendants have not since, to wit, the 1st day of March, 1893, ceased and desisted from charging or receiving any greater compensation in the aggregate for the transportation of a like kind of property from Cincinnati and other points, called and known as Ohio River points, for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, in the State of Georgia, than for the longer distance over the same line in the same
5 direction to Atlanta, in the State of Georgia; the said defendants not having prior to, to wit, the 1st day of March, 1893, made application to the said Commission for relief under the proviso clause of the fourth section of the act to regulate commerce.

WHEREFORE THE PETITIONER PRAYS—

1. That a subpœna or other suitable process may issue according to the course of equity, requiring the Western and Atlantic Railroad Company, the Louisville and Nashville Railroad Company, the Nashville, Chattanooga and St. Louis Railroad Company, the Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway, and the Cincinnati Southern Railway Company, and S. M. Felton, of Cincinnati, in the State of Ohio, severally to appear at such time and place as this honorable court may determine, then and there

each to make full, complete, and perfect answer to the matters and things hereinabove stated and charged as fully and particularly as if the said defendants were each specifically and specially interrogated in regard hereto, without verifying said answer by oath, which said verified answer is hereby specially waived.

2. That upon the filing of this petition an order may be passed by this honorable court directing the method of service of notice of the pendency of this proceeding.

3. That such order or orders may be passed pending the cause as will secure a speedy hearing and determination of the matters and things stated and charged in the foregoing petition.

4. That such order or orders may be passed pending the cause as may be necessary for the prosecution of all such inquiries as the court may think needful to enable it to form a just judgment of the matters and things stated and charged in the foregoing petition.

5. That an order may be entered pending the cause granting to the petitioner a writ of injunction or other proper process, mandatory or otherwise, to restrain the said defendants, their officers, servants, and attorneys from further continuing in their violations of and disobedience to the said order of the said Commission, and that upon final hearing such injunction may be made perpetual.

6. That a decree may be entered, if it shall seem meet to this honorable court, requiring the said defendants each to pay such sum of money, not exceeding the sum of $500, for every day after a day to be named in said decree that they or any of them shall fail to obey the said injunction or other proper process.

7. For such other and further relief in the premises as to the court may seem meet and the equities of the petitioner's cause may require.

THE INTERSTATE COMMERCE COMMISSION,

[L. S.] By EDWARD A. MOSELEY,

The Secretary thereof, thereunto duly authorized.

7 EXHIBIT A.

8 L. N. TRAMMELL, ALLEN FORT, VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY, The Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway, and The Cincinnati Southern Railway Company.

The petition of the above-named complainants respectfully shows:

First. That they compose and constitute the railroad commission of the State of Georgia; that said commission has been duly and legally created by the laws of the State of Georgia, and that its duties under the laws of said State are to make reasonable and just rates of freight

and passenger tariffs, to be observed by all railroad companies doing business in this State on railroads thereof, and, among other matters, to investigate all through freight rates from points out of Georgia to points in Georgia; and whenever the said commission finds that the through rate charged into Georgia is, in their opinion, excessive or unreasonable or discriminating in its nature, they shall call the attention of the railroad officials in Georgia to the fact, and that, when such rates are not changed, it shall be the duty of the commission to present the facts to the Interstate Commerce Commission and appeal to it for relief.

This commission, therefore, having no personal or pecuniary interest in the matter herein set out, except to see that the law is enforced for the benefit of society in the discharge of the duties prescribed for them by the laws of the State of Georgia, come now, and in the public interest complain in their own name, but for the sole interest of the public, and say:

Second. That the defendants above named are common carriers and, under a common control, management, or arrangement for continuous carriage or shipment, are engaged in the transportation of passengers and property wholly by railroad between points south of the Ohio River in the State of Ohio and points in the State of Georgia, and as such common carriers are subject to the act to regulate commerce.

Third. That such (and said) common carriers, under such common control, management, or arrangement for continuous carriage, have made and fixed, and have heretofore, and do now charge, collect, and
9 receive from the people of this State the following-named rates for through freight shipped and transported by them from the city of Cincinnati, in the State of Ohio, to the termini of and stations on the Western and Atlantic Railroad in the State of Georgia, to wit:

Through rates of freight from Ohio River points to Western and Atlantic stations.

	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun	$1.09	$0.95	$0.84	$0.71	$0.59	$0.44	$0.34	$0.40	$0.42	$0.27½	$0.53	$0.57	$0.56
Adairsville	1.12	.98	.86	.73	.60	.45	.35	.41	.32½	.28	.54	.59	.57
Kingston	1.15	1.01	.88	.75	.61	.46	.36	.42	.52½	.28	.55	.61	.57
Cartersville	1.18	1.03	.90	.76	.62	.47	.37	.43	.34	.29	.56	.62	.59½
Acworth	1.24	1.07	.94	.78	.64	.49	.39	.45	.35	.30	.58	.64	.61
Marietta	1.27	1.09	.96	.79	.65	.50	.38	.45	.35	.30	.56	.65	.62
Atlanta	1.07	.92	.81	.68	.56	.46	.28	.35	.28	.24	.48	.53	.46

The figures 1, 2, 3, etc., and the letters A, B, C, etc., refer to classes of freight known as first-class, second-class, etc., and Class A, Class B, and C, and the figures in the lines opposite the name of the town or station mean so much, as expressed by said figures, on the hundred pounds of freight of each class.

And that the transportation of like kind of through freight is under substantially similar circumstances and conditions to such terminus and station on said Western and Atlantic Railroad, and that said carriers have not been authorized by your Commission to charge less for longer than shorter distances for the transportation of said through freight.

Petitioners further show that the city of Chattanooga, in the State of Tennessee, is the western terminus of said Western and Atlantic Railroad, one of the common carriers so engaged, aforesaid, in the transportation of passengers and property wholly by railroad under such common control, management, and arrangement for continuous carriage, and that

the city of Atlanta, in the State of Georgia, is the eastern terminus of the said railroad, and the two cities, which are the termini of said road, are located and distant from each other as follows, to wit: Chattanooga, by the line of railroad, is distant from Atlanta 50 miles.

And your petitioners show that, notwithstanding the town and station at Marietta is 20 miles west of Atlanta and 118 miles east of Chattanooga, and that Acworth is 35 miles west of Atlanta and 103 miles east of Chattanooga, and that Cartersville is 48 miles west of Atlanta and 90 miles east of Chattanooga, and that Kingston is 59 miles west of Atlanta and 79 miles east of Chattanooga, and that Adairsville is 69 miles west of Atlanta and 69 miles east of Chattanooga, and that Calhoun is 78 miles west of Atlanta and 60 miles east of Chattanooga, the rates of freight charged, collected, and received by the defendants for freight transportation by continuous carriage from the city of Cincinnati and other Ohio River points to the towns and stations of Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun are more and greater on each class than the amount charged and received for freight to the city of Atlanta, which is a greater distance from the city of Cincinnati (and other Ohio River points), which is the shipping point in both instances, and so the rate collected and charged for freight shipped from Cincinnati, Ohio, by the defendants to the towns and stations on the said railroad is greater than the rate collected and charged by them to the city of Atlanta, notwithstanding the fact that the city of Atlanta is at a greater distance from said shipping point, and there is no water competition.

Your petitioners say that, in their opinion, the rates of freight into the towns and stations on said railroad in the State of Georgia, as aforesaid, were unreasonable and discriminating in their nature, and your petitioners, as a commission, called the attention of the officials of the said Western and Atlantic Railroad Company to the fact, and urged upon them the propriety of changing such rate, but the said officials refused and declined to change the same, and continued and still continue to charge and collect the aforesaid rates of freight to the town and stations as aforesaid.

Whereupon petitioners, as the Railroad Commission of the State of Georgia, come and present the facts as aforesaid, and appeal to the Interstate Commerce Commission for relief, and aver and charge that the aforesaid through rate of freight into the State of Georgia and to different towns and stations on the Western and Atlantic Railroad, so made and charged and collected by the carriers, as aforesaid, is unreasonable and discriminating in its nature, and is in direct violation of section 4 of the act of Congress entitled "An act to regulate commerce."

Wherefore petitioners pray that the defendants may be required to answer the charge herein, and that after due hearing and investigation an order be made commanding the defendants to cease and desist from said violations of the act to regulate commerce, and to such other and further order as the Commission may deem necessary in the premises.

Atlanta, Georgia, this 16th day of October, 1891.

L. N. TRAMMELL.
ALLEN FORT.
VIRGIL POWERS.

STATE OF GEORGIA, *Fulton County:*

L. N. Trammell, being duly sworn, says that he is a member of the Georgia Railroad Commission, the complainants in this proceeding, and that the matters set forth in the foregoing petition are true, as he verily believes.

L. M. TRAMMELL.

Subscribed and sworn to before me this 16th day of October, 1891.

[L. S.] BEN. J. DAVIS,
Notary Public, Fulton County, Ga.

11 EXHIBIT B.

12 The answer of the Louisville and Nashville Railroad Company to the petition filed before the Interstate Commerce Commission, by L. N. Trammell, Allen Fort, and Virgil Powers, constituting the railroad commission of Georgia, against The Western and Atlantic Railroad Company, this respondent, and others.

I.

Respondent admits that the petitioners constitute the railroad commission of the State of Georgia, but as to whether said commission has been duly and legally created and as to what are its legal duties respondent prefers that the laws creating the commission and defining its duties shall be allowed to speak for themselves.

II.

It is true that the defendants to said petition are common carriers, and are engaged, over their respective lines, in the transportation of passengers and property wholly by railroad, between points on the Ohio River and points in the State of Georgia, but said defendants are not under any common control, management, or arrangement for continuous carriage or shipment.

It is true that this defendant, in connection with the Nashville, Chattanooga and St. Louis Railway and the Western and Atlantic Railroad have, by agreement, made and fixed, and have heretofore and do now charge, collect, and receive from the people of the State of Georgia the rates for through freight shipped and transported by them over their respective lines from the city of Cincinnati, in the State of Ohio, to the termini of and stations on the Western and Atlantic Railroad, in the State of Georgia, as set out and shown in Schedule A, here filed and made part hereof.

III.

Respondent denies that the transportation of like kind of freight is done under substantially similar circumstances and conditions when done between points on the Ohio River and Atlanta, as when done between said Ohio River points and the stations mentioned in the petition, on the Western and Atlantic Railroad.

On the contrary, respondent avers that the transportation of like kind of freight between said Ohio River points and Atlanta is done under entirely different circumstances and conditions from those affecting the transportation from said Ohio River points to the stations mentioned in the petition.

13 The rates on freight from said Ohio River points to Atlanta are controlled entirely by the competition of lines which are rivals to the line formed by respondent's road, the Nashville, Chattanooga and St. Louis Railway and the Western and Atlantic Railroad, whereas no such competition exists between said Ohio River points and the stations mentioned in the petition.

IV.

Respondent admits that the city of Chattanooga, State of Tennessee, is the western terminus of said Western and Atlantic Railroad, and that the city of Atlanta is the eastern terminus of said railroad, and that Chattanooga is distant from Atlanta one hundred and thirty-eight (138) miles. Respondent admits that the other stations mentioned in the petition are distant from Atlanta and Chattanooga respectively as stated in said petition.

V.

It is true that the rates of freight charged, collected, and received by respondent and the Nashville, Chattanooga and St. Louis Railway and the Western and Atlantic Railroad for freight transported by continuous carriage from the city of Cincinnati and other Ohio River points to the stations mentioned in the petition are more and greater on each class mentioned in the petition than the amount charged and received for freight to Atlanta, which is a greater distance from the city of Cincinnati and other Ohio River points, notwithstanding the fact that there is no direct water competition at the city of Atlanta; but there is railroad competition at Atlanta from other lines, which is just as effective as water competition, and some of those lines are not subject to the control of the Interstate Commerce Commission.

VI.

Respondent denies that the rates of freight in which this respondent participates, as aforesaid, are unreasonable and discriminating in their nature. On the contrary, respondent avers that they are fair and reasonable and equal and open to everyone, and that they do not unjustly discriminate against any person or place.

VII.

Respondent is informed that petitioners did call the attention of the officials of the Western and Atlantic Railroad to the fact that higher rates were being charged for shorter distances than for longer distances, meaning the rates charged to the stations mentioned in the petition, and

14 that petitioners did urge upon said officials the propriety of changing such rates, and that said officials refused and declined to change the same, and still continue to charge and collect the aforesaid rates of freight to the stations mentioned in the petition.

A meeting was held in Atlanta in April, 1891, in response to a summons from the commissioners, at which meeting all of the railroads operated in Georgia were represented, and, after a full explanation and discussion of the matter, it was the opinion of all of the officials representing said railroads that the rates complained of in the petition, as well as certain rates on other lines, were made upon a fair and reasonable basis, and that they ought to be adhered to.

STATE OF KENTUCKY, *County of Jefferson:*

S. R. Knott, first vice-president of the Louisville and Nashville Railroad Company, the above-named respondent, being duly sworn, says that the matter set forth in the foregoing answer are true, as he verily believes.

S. R. KNOTT,
First Vice-President.

Subscribed and sworn to before me this 5th day of November, 1891.

[SEAL.] G. W. B. OLMSTEAD,
Notary Public.

[Form 826.]

EXHIBIT A.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
OFFICE OF GENERAL FREIGHT AGENT,
Louisville, Ky., November 5, 1891.

Statement of freight rates in effect from Cincinnati, Ohio; Louisville, Ky., and Evansville, Ind., to the stations on the Western and Atlantic Railway named below.

	In cents, per hundred pounds.												Per barrel.
Classes	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	109	95	84	71	59	44	34	49	32	27½	53	57	56
Adairsville, Ga	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston, Ga	115	101	88	75	61	46	36	42	32½	28	55	61	57
Cartersville, Ga	118	103	90	76	62	47	37	43	34	29	56	62	59½
Acworth, Ga	124	107	94	78	64	49	39	45	35	30	58	64	61
Marietta, Ga	127	109	96	79	65	50	38	45	35	30	56	65	62
Atlanta, Ga	107	92	81	68	56	46	28	35	28	24	48	53	48

15 EXHIBIT C.

16 L. N. TRAMMEL, ALLEN FORT, VIRGIL Powers, constituting and composing the Railroad Commission of Georgia,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY, The Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of The Cincinnati Southern Railway, and The Cincinnati Southern Railway Company.

The answer of the above-named Nashville, Chattanooga and St. Louis Railway, in its own name and as sole lessee of the Western and Atlantic Railroad, to the petition filed before the Interstate Commerce Commission.

The said Nashville, Chattanooga and St. Louis Railway for answer says: That the petition fails to allege that the respective freights mentioned were of like quantity and of the same class; it fails to show that shipments are made to the different stations on the Western and Atlantic Railroad set out under like conditions, and the petition must state that the shipments are made under like conditions; the petition fails to set out that shipments to the several stations are made by the same kind of trains; the petition does not allege that the discriminations complained of are unjust, but merely that, in the petitioners' minds, the rates were unreasonable and discriminating.

Said railway denies that it is, in its own right or as lessee of the Western and Atlantic Railroad, under the common control or management of any of the other defendants.

Said railway denies that under the tariff now in effect the rates from Cincinnati, Ohio, to the points mentioned in the petition are correctly given in the petition.

Said railway denies that the transportation is under substantially similar circumstances from Cincinnati to the stations on the Western and Atlantic Railroad.

Said railway denies that it has been guilty of any unjust discrimination as set out in the petition, and denies that greater rates are charged for short hauls of the same quantity and under like conditions and circumstances.

And said railway denies that it has violated any provision of the act of Congress entitled "An act to regulate commerce."

17 And having answered all allegations of the petition, said railway prays to be dismissed.

This November the 12th, 1891.

EAST & FOGG,
General Counsel.

STATE OF TENNESSEE, *Davidson County:*

J. W. Thomas, being duly sworn, says that he is the president of the Nashville, Chattanooga and St. Louis Railway, a respondent in this pro-

ceeding, and that such railway is sole lessee of the Western and Atlantic Railroad Company, a defendant in the proceeding, and that the matters set forth in the foregoing answer are true to the best of his knowledge and belief.

J. W. THOMAS.

Subscribed and sworn to before me this November 12, 1891.

[SEAL.] ROY FITZPATRICK,
Notary Public.

19 EXHIBIT D.

20 WESTERN AND ATLANTIC RAILROAD,
Atlanta, Ga., November 21, 1891.

[J. L. Dickey, general freight agent.]

DEAR SIR: The Western and Atlantic Railroad beg to file herewith answer to the complaint of the honorable the Railroad Commission of Georgia, dated October 16, 1891, and filed with your honorable body, the Interstate Commerce Commission of the United States, and charging this company with being a party to rates which were unreasonable and discriminating in their nature, in that the rates from the city of Cincinnati, Ohio, to the towns of Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, situated upon the line of the Western and Atlantic Railroad west of its eastern termini, the city of Atlanta, were higher than to the city of Atlanta, said city being further from shipping point than intermediate stations named.

The Western and Atlantic Railroad answers as follows, viz:

First. That it is not a party to any through rates from the city of Cincinnati to any of the intermediate stations named, having no joint through tariff with any connecting lines between said city and stations referred to, and that the rates from Cincinnati to said stations are made by adding the rates from Chattanooga, the western termini of the Western and Atlantic Railroad, to the through rates from Cincinnati to Chattanooga. The figures shown in said tariff of through rates from Cincinnati to Chattanooga being familiar to your honorable body and on file in your office, they are not here set forth. The rates from Chattanooga to all local stations on the Western and Atlantic Railroad are also on file in your office, and are in fact the standard rates of the Railroad Commission of Georgia.

Second. That the Railroad Commission of Georgia erred in their statement that the rates to the city of Atlanta were not influenced by water lines. As is well known to your Commission, in construction of rates from Western trade centers, as well as from the Eastern cities, to the city of Atlanta due regard is given to water-and-rail combinations. Indeed, it could not be otherwise, from the fact that the city of Atlanta has direct access to Gulf and South Atlantic ports by immediate and continuous rail lines, viz: The Central Railroad of Georgia to the port of Savannah, by the East Tennessee, Virginia and Georgia to the port of Brunswick, by the Western of Alabama to Montgomery, thence by the Alabama River to the port of Mobile, by the Georgia Railroad to Augusta, thence

via the Savannah River to Savannah, by the Georgia Pacific to
21 the Mississippi River at Greenville, Miss., and by the East Tennessee, Virginia, and Georgia to the Mississippi River at Memphis, Tenn., besides other connecting lines working directly to Gulf and South Atlantic ports, viz, the Georgia and South Carolina Railroads to the port of Charleston, the Georgia and Port Royal and Augusta to the port of Port Royal, the Western of Alabama and the Louisville and Nashville railroads to the ports of New Orleans, Pensacola, and Mobile, the East Tennessee, Virginia and Georgia and Norfolk and Western Railroad to the port of Norfolk, and the Richmond and Danville to the port of West Point. It appears, therefore, unreasonable to assert that water competition has nothing to do with fixing the rates to Atlanta. The efforts to properly correlate the rates from east and northwest to points embraced in the territory south and east of the Ohio and Mississippi rivers, and west of the Potomac, have engaged the attention of the best railroad talent in the territory for the past twenty years, Atlanta being a pivotal point, Baltimore on the east, Cincinnati, Louisville, Evansville, etc., on the northwest. Distance from Atlanta being approximately the same according to transportation methods of computing distance by rail and water, the rates from Baltimore to Atlanta have been fixed the same as from Cincinnati, Louisville, etc., to Atlanta, and a large number of principal points, such as Macon, Columbus, Augusta, Athens, Milledgeville, Montgomery, Chattanooga, and Birmingham have been adjusted on that basis. Your honorable body will therefore readily perceive the great confusion which would follow the disturbance of this basis. This, however, would not be an argument against your interference if the rates within themselves were not properly fixed, all circumstances considered.

This whole matter has been carefully investigated in every detail by your honorable board, and has so far had your sanction and approval. You have not seen proper to order that rates to intermediate stations on the Western and Atlantic Railroad from Western points be brought down to the level of through competitive rates to the city of Atlanta. Considering the importance of this city, with her eight systems of converging and diverging lines as a commercial center, with water competition bearing directly upon the adjustment of her rates, and the very terms of the interstate-commerce law itself exempting the Western and Atlantic Railroad from the operation of the fourth clause of said act.

Third. The policy of the Western and Atlantic Railroad has been and is to give to the towns situated upon its line as favorable rates as are compatible with the successful operation of the road, and it is a gratifying circumstance that no community upon its line has lodged any complaints with the Interstate Commission. The situation in the South with reference to volume of traffic, both passenger and freight, is such that if the leveling process should have to be adhered to it would have to be upward instead of downward, as you have ascertained by investi-
22 gation and, as I understand, so considered. In this connection, and bearing directly upon the case, I invite your attention to the testimony of the Hon. Virgil Powers, then commissioner of the Southern Railway and Steamship Association, now one of the commissioners of

Georgia, taken before your honorable body in the city of Washington in the early part of 1887.

Fourth. It is a matter of actual fact that the city of Atlanta, in its corporate capacity, contributed in bonds $300,000 to aid in building the Richmond and Charlotte Air Line Railroad, now styled the Richmond and Charlotte Division of the Richmond and Danville Railroad. It also, in its corporate capacity, contributed in bonds $300,000 to aid in building the Georgia Western Railroad, now styled the Georgia Pacific Railway, and its citizens contributed almost, if not quite, $500,000 to the building of the Atlanta and Florida Railroad. Therefore the citizens of Atlanta have, through official municipal action or in their private capacity, contributed over $1,000,000 to the building of railroads entering the city, which built up towns on their lines not before in existence and largely increased in population and wealth other towns already built. On the contrary, the towns of Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, situated upon the line of the Western and Atlantic Railroad northwest of Atlanta, have never contributed a dollar to the building of any railroad which affected the through traffic of said towns. As a matter of equity, therefore, it would be wrong to punish the city or citizens of Atlanta by insisting that the rates of the towns above mentioned should be made equal to the rates to Atlanta. Your honorable body can readily see the justice of this argument without further elaboration of it on my part.

Fifth. The Western and Atlantic Railroad positively states and avers that in establishing its rates it has endeavored to conform to the spirit and intent of the interstate-commerce act, and that its rates within themselves are reasonable and just, and it therefore respectfully prays that its rate adjustment be not disturbed and that the petition of complainants be not granted.

Respectfully submitted.

JAMES L. DICKEY,
General Freight Agent.

EDWIN A. MOSELY, Esq.,
Secretary Interstate Commerce Commission,
Washington, D. C.

Personally appeared before me, a notary public of Fulton County, Ga., James L. Dickey, general freight agent of the Western and Atlantic Railroad, who on oath says he verily believes that the foregoing is true.

JAMES L. DICKEY.

Sworn and subscribed to before me this 21st day of November, 1891.

[SEAL.] GEORGE M. BROWN.
Notary Public in and for Fulton County, Ga.

23 EXHIBIT E.

24 Before the Interstate Commerce Commission.

L. N. TRAMMELL, ALLEN FORT, AND VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY; THE LOUISVILLE and Nashville Railroad Company; The Nashville, Chattanooga and St. Louis Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company (lessees of the Cincinnati Southern Railway), and The Cincinnati Southern Railway Company.

Answer of the Cincinnati, New Orleans and Texas Pacific Railway Company.

Now comes the Cincinnati, New Orleans and Texas Pacific Railway Company, and for answer says:

First. Defendant admits that the petitioners are the railroad commission of Georgia.

Second. Defendant admits that the defendants named are common carriers, but it says that they are not under any common control or management.

It says that passengers and property are transported by continuous carriage or shipment by defendants between points on and south of the Ohio River and points in the State of Georgia.

Third. Defendant says that the through rates of freight named in the third paragraph of the complaint are not correct. It says that the rates to Marietta and Atlanta are made under dissimilar circumstances and conditions from the rates made to the other points named in said petition, and that such rates are not in violation of the fourth clause of the act to regulate commerce. It denies that any of its rates of freight are unreasonable or unjustly discriminating in their nature.

And having fully answered, defendant prays hence to be dismissed at its costs.

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY.

BY EDWARD COLSTON,
General Counsel.

25 STATE OF OHIO, *Hamilton County, ss:*

C. C. Harvey, being duly sworn, says that he is vice-president of the Cincinnati, New Orleans and Texas Pacific Railway Company; that the foregoing answer is true, as he verily believes.

C. C. HARVEY.

Sworn to before me and subscribed in my presence this 12th day of January, A. D. 1892.

[SEAL.] CHARLES M. CIST,
Notary Public, Hamilton County, Ohio.

Copy of the foregoing answer mailed to the petitioners at Atlanta, Ga., this 12th day of January, A. D. 1892.

27 EXHIBIT F.

28 [Louisville and Nashville R. R. Company.]

OFFICE OF DISTRICT ATTORNEY,
Nashville, Tenn., Sept. 3, 1892.

Ga. R. R. Commission *vs.* W. & A. and L. & N. R. R. Cos. et al., 7897.
Ga. R. R. Commission *vs.* Clyde S. S. Co., L. & N. R. R., et al., 7894.
Ga. R. R. Commission *vs.* Clyde S. S. Co., So. Car. Rd., et al., 7980.
Ga. R. R. Commission *vs.* L. & N. and N. C. & St. L. Ry. et al., 7980.
Ga. R. R. Commission *vs.* So. Car. R. R. and L. and N. R. R. et al., 7981.

DEAR SIR: In reply to your telegram of 24th ult.:

These cases involve the same question as the Social Circle case, which has been prepared for trial, with the hope that it can be heard at the approaching term of the U. S. Supreme Court. Mr. Safford writes me that his health is such that he can not argue the Social Circle case for several weeks, but I am in hopes that he will recover in time to argue that case so as to get it heard at the approaching term of the U. S. Supreme Court. The decision of that case by the Supreme Court will virtually settle all of these cases, and I respectfully request that the Commission continue these cases, say for 90 days, or until we can see if the Social Circle case can be heard by the Supreme Court at the approaching term. Will you kindly present this application for me.

Yours truly,

ED. BAXTER,
S.,
District Attorney.

EDW. A. MOSELEY, Esq.,
Secretary Interstate Commerce Commission,
Washington, D. C.

29 EXHIBIT G.

30 At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 19th day of October, A. D. 1892.

Present: Hon. Wheelock G. Veazey, Hon. Martin A. Knapp, Hon. James W. McDill, Commissioners.

THE GEORGIA RAILROAD COMMISSION
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY et al., and six other cases.

On reading the application of Edward Baxter, esq., counsel for the above-named defendant, for postponement of the decision of these cases for ninety days, or until after the determination of the so-called Social Circle case, entitled upon the record "Interstate Commerce Commission against The Cincinnati, New Orleans and Texas Pacific Railway Company et al.," and now pending in the United States circuit court for the northern district of Georgia,

It is ordered, That said application be, and is hereby, denied.

31 EXHIBIT H. 17

18650——2

BEFORE THE

Interstate Commerce Commission.

[No. 314.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

v.

THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, THE GEORGIA RAILROAD & BANKING COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY and THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, Lessees of the Georgia Railroad, THE RICHMOND & DANVILLE RAILROAD COMPANY and THE GEORGIA PACIFIC RAILWAY COMPANY, Lessees of the Central Railroad of Georgia.

[No. 315.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

v.

THE OCEAN STEAMSHIP COMPANY, THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, THE GEORGIA PACIFIC RAILWAY COMPANY and THE RICHMOND & DANVILLE RAILROAD COMPANY, Lessees of the Central Railroad of Georgia.

[No. 316.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

v.

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, Lessee of the Cincinnati Southern Railway, THE CINCINNATI SOUTHERN RAILWAY COMPANY, THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY, THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, THE GEORGIA PACIFIC RAILWAY COMPANY and THE RICHMOND & DANVILLE RAILROAD COMPANY, Lessees of the Central Railroad of Georgia.

[No. 317.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

v.

THE WESTERN & ATLANTIC RAILROAD COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY, THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, Lessee of the Cincinnati Southern Railway, and THE CINCINNATI SOUTHERN RAILWAY COMPANY.

[No. 324.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Railroad Commission of Georgia,

v.

THE SOUTH CAROLINA RAILWAY COMPANY, THE GEORGIA RAILROAD & BANKING COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY and THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, Lessees of the Georgia Railroad, THE RICHMOND & DANVILLE RAILROAD COMPANY and THE GEORGIA PACIFIC RAILWAY COMPANY, Lessees of the Central Railroad of Georgia, THE ATLANTA & WEST POINT RAILROAD COMPANY, and THE WESTERN RAILWAY COMPANY OF ALABAMA.

[No. 325.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Rail-road Commission of Georgia,

v.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE NASHVILLE, CHATTANOOGA & St. LOUIS RAILWAY COMPANY, Individually and as Lessee of the Western & Atlantic Rail-road, THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, Lessee of the Cincinnati Southern Railway, THE CINCINNATI SOUTHERN RAILWAY COMPANY, THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY, THE ATLANTA & WEST POINT RAILROAD COMPANY, and THE WESTERN RAILWAY COMPANY OF ALABAMA.

[No. 326.]

L. N. TRAMMELL, ALLEN FORT and VIRGIL POWERS, constituting and composing the Rail-road Commission of Georgia,

v.

THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, THE GEORGIA RAILROAD & BANKING COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY and THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, Lessees of the Georgia Railroad, THE RICHMOND & DANVILLE RAILROAD COMPANY, and THE GEORGIA PACIFIC RAILWAY COMPANY, Lessees of the Central Railroad of Georgia, THE ATLANTA & WEST POINT RAILROAD COMPANY and THE WESTERN RAILWAY COMPANY OF ALABAMA.

Complaints in Nos. 314, 315, 316 and 317 filed October 22, 1891.—Answers filed November 1891, to January 18, 1892.—Also on March 25, 1892.—Complaints in Nos. 324, 325 and 326 filed January 20, 1892.—Answers filed February 15 to March 25, 1892.—Hearing at Atlanta, Ga., March 24, 25, 1892.—Briefs filed, July 1 to Aug. 24, 1892.—Decided November 11, 1892.

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1. The fact of a receivership for a defendant carrier subsequent to complaint should not interfere with the progress of a proceeding brought merely for the purpose of railway regulation.
2. The phrase "common control, management or arrangement for continuous carriage or shipment" in the first section of the Act to Regulate Commerce was intended to cover all interstate traffic carried through over all rail or part water and part rail lines. The receipt successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.
3. The total rate for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate is made is only material as bearing upon the legality of the aggregate charge, and how any reduction may be accomplished is matter for the carriers to determine among themselves.
4. The second, third and fourth sections of the Act to Regulate Commerce compared with provisions in English statutes. English decisions examined, and the frequent citation of such decisions to influence cases brought under greatly dissimilar statutory provisions in this country, without regard to differences in facts, time, extent of country and methods of trade and transportation considered and criticised.
5. The fourth section of the Act to Regulate Commerce construed, and the principles laid down in *Re Petitions of Louisville & Nashville R. Co.*, 1 Inters. Com. Rep. 278, 1 I. C. C. Rep. 31, reaffirmed, except the rule therein whereby carriers were permitted to judge for themselves in the first instance of what constitutes "rare and peculiar cases" of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition," which is hereby overruled.
6. The competition of carriers subject to the Act to Regulate Commerce does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines.
7. The competition of markets on different lines for the sale of commodities at a given point served by both lines does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines. To determine the force and effect of such competition involves consideration of commercial questions

lar to the business of shippers, such as advantage of business location, comparative economy of production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under which transportation is conducted. Carriers cannot create abnormal situations by making rates which equalize advantages and disadvantages of localities and thereupon claim justification for greater charges on shorter hauls on the ground that the lesser long haul charges which accomplish such equalization are necessary to secure increase in traffic over their lines.

The carrier has the right to judge in the first instance whether it is justified in making the *greater charge for the shorter distance* under the fourth section in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers not subject to regulation under the Act to Regulate Commerce. In other cases under the fourth section the circumstances and conditions are not presumptively dissimilar and carriers must not charge *less for the longer distance* except upon the order of this Commission.

9. When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for shorter hauls, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor. There seems to be no limitation upon the power of the Commission to grant relief under that proviso when, after investigation, the Commission is satisfied that the interests of commerce and common fairness to the carriers require that an exception should be made.

10. Complaints in cases No. 324 and No. 325 dismissed. In cases Nos. 314, 315, 316, 317 and 326, defendants ordered to cease and desist from charging more to shorter than to longer distance points mentioned in the complaints, or file applications for relief under the proviso clause of the fourth section and show cause thereon, within a time specified.

COPY BOUND CLOSE IN CENTER

William A. Little and *Robert Berner*, for Complainant.
James T. Worthington, for R. & D. R. R. Co., Ga. P. Ry. Co. and C. R. R. & Bkg. Co. of Ga.
Thomas Cobb Jackson, for Receivers of C R. R. & Bkg. Co. of Ga.
Calhoun, King & Spalding, for A. & W. P. R. R. Co.
George P. Harrison, for W. Ry. of Ala.
Joseph B. Cumming and *Bryan Cumming*, for Ga. R. R. and Ga. R. R. & Bkg. Co.
William M. Baxter, for E. T. V. & G. Ry. Co.
Ed. Baxter, for L. & N. R. R. Co.
Brawley & Barnwell, for Receiver of S. C. Ry. Co.
Edward Colston, for C. N. O. & T. P. Ry. Co.
East & Fogg, for N. C. & St. L. Ry. Co., and W. & A. R. R.
Payne & Tye, for W. & A. R. R.

REPORT AND OPINION OF THE COMMISSION.

HEARLEY, *Commissioner:*

The complaints in the above entitled cases, brought by the members and in the name of the Railroad Commission of the state of Georgia, allege that rates charged by the defendants for the transportation of freights from Cincinnati and other Ohio river points and from New York and other North Atlantic ports to various named places, nearly all within the state of Georgia, are "unreasonable, discriminating and in direct violation of section four of the Act to Regulate Commerce."

The violations of law alleged in the several complaints being of the same general character, differing only as to points and routes, it was understood at the hearing that the testimony taken in each case would be considered in the others so far as applicable, and it is proper, therefore, that all these cases should be embraced in the same decision.

The main question presented by the pleadings is whether charges which are greater for shorter than for longer distances in the same direction over the defendant lines are unlawful under the statute.

The defendants in their answers deny that transportation to the longer and shorter dis-

tance points is under substantially similar circumstances and conditions, and that therefore the greater charges for shorter distances complained of do not contravene the provisions of the Act to Regulate Commerce. The principal grounds on which this denial is based are the competition of all rail and part rail and part water lines from the same point of consignment to the same point of destination; the competition of all rail and part rail and part water lines from different points of consignment to the same destination; and the influence of water routes which either reach the point of destination direct, or deliver to a connecting carrier at a point in the same territory.

Still another ground of defense was set up in some of the cases, that property destined to intermediate points is not carried under circumstances and conditions substantially similar to those applying at the longer distance points because through rates are given only to the latter, while rates to the shorter distance points are made up of a through rate in effect to a basing point plus local rates of the terminal carrier therefrom.

There are, however, two minor questions to be considered: 1. Is the complainant authorized to bring and maintain these proceedings? 2. Are certain of the defendants common carriers over the line between points mentioned?

The Georgia Railroad Commission, complainant herein, is directed by a statute of the state of Georgia to bring complaint before this Commission whenever, after failure to obtain a satisfactory adjustment of rates, it finds through rates charged into Georgia to be excessive, unreasonable or discriminating, and by section thirteen of the Act to Regulate Commerce, this Commission is directed to investigate any complaint forwarded by the Railroad Commission of any state or territory. It is immaterial whether the complainant be the state Railroad Commission itself, or the parties on whose behalf it requests the investigation to be made. The Georgia Railroad Commission is a proper complainant in these proceedings.

As to the second of the minor questions, whether certain of the defendants, to wit, the Georgia Railroad & Banking Company, the Central Railroad & Banking Company, the Georgia Pacific Railway Company, and the Richmond & Danville Railroad Company, are common carriers controlling rates and operating roads parts of through lines between points of shipment and destination, it seems sufficient to hold generally that only those defendants who are in any degree responsible for transportation charges over the respective roads will be expected to comply with any order for the re-adjustment of those charges which may hereafter be issued in these proceedings. It was claimed on the hearing that the defendant, the Central Railroad & Banking Company of Georgia, was then in the hands of receivers, and not properly before the Commission. That Company was served with a copy of each complaint in which it was interested and before the receivers assumed control of its affairs; answers were filed on its behalf, and the receivers afterwards appointed were represented by counsel at the hearing. Under these facts the proceedings may well go on without a present determination whether a regulating order in the case would affect the receivers without an order of the court which appointed them. As a general proposition we see no reason why the fact of a receivership subsequent to complaint should interfere with the progress of a proceeding brought merely for the purpose of railway regulation.

Another question in the cases is whether the transportation of property over the roads composing the respective through lines to the intermediate points is conducted under a common control, management, or arrangement for continuous carriage or shipment, but this question is raised by the defendants in connection with the main point in controversy, and should not be determined until after the facts in the cases are found and stated.

In view of the fact that the issues present mainly a single question of violation of the fourth section, the decision of which will also involve the disposition of the subsidiary matters of unreasonable and discriminating rates alleged and denied herein, it seems unnecessary to further analyze the pleadings. The respective routes, points and rates involved in the several cases are described in the following statement of facts, rates to points termed shorter distance points being those of which complaint is made. The cases will, with a single exception, be taken up in the order in which they were heard.

FACTS.

Case No. 317.

1. In this case the route is all rail from Cincinnati or other places called "Ohio river points" over either the Cincinnati, New Orleans & Texas Pacific Railway to Chattanooga or Boyce, near Chattanooga, or the Louisville & Nashville Railroad to Nashville, and the Nashville, Chattanooga & St. Louis Railway to Chattanooga, and from Boyce or Chattanooga by the Western & Atlantic Railroad, operated under lease from the state of Georgia by the Nashville, Chattanooga & St. Louis Railway Company, to Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta, shorter distance points, and Atlanta, the longer distance point, all in the state of Georgia. This route will be designated "The Chatta-

nooga-Atlanta All-Rail Route," and is shown low:

THE CHATTANOOGA-ATLANTA ALL-RAIL ROUTE.

Freight is carried from Cincinnati over this route to the various destinations on the Western & Atlantic road as through shipments under through bills of lading issued by the initial line. Through freight is delivered free to consignees in Atlanta either by carting or switching to warehouse doors; no free delivery is made at the local stations on the Western & Atlantic.

2. Rates to Atlanta on property shipped from north of Chattanooga are divided between the carriers in certain proportions, but charges to all points north of Atlanta and south of Chattanooga are combinations of established rates to Chattanooga and local rates of the Western & Atlantic from Chattanooga. In 1887, the Western & Atlantic issued a circular to its connections stating in effect that it would not accept less than its regular local charges on through business to points on its line where competition did not compel it to participate in and agree to lower through rates. This circular does not appear to have been filed with the Commission, nor were the defendants able to produce it at the hearing, but there is no reason to doubt its having been issued.

When the circular was issued this road was under another management, but the lessee now operating the road introduced evidence concerning the circular and continues to charge according to its terms.

Rates and distances over the Chattanooga-Atlanta route from Cincinnati are shown by the following table. Rates to Chattanooga and Atlanta are single rates, while those to the other points are combination rates to Chattanooga and locals therefrom.

Statement Showing Class Rates from Cincinnati to the Following Stations on the Western & Atlantic R. R.

Miles	From Cincinnati, O. To	1.	2.	3.	4.	5.	6.	A	B	C	D	E	H	F
336	Chattanooga Tenn.	76	65	57	47	40	30	30	26	23	19	34	33	38
359	Ringgold, Ga.	98	85	75	63	53	41	31	37	30½	25½	47	49	53
374	Dalton, Ga.	103	89	79	67	56	42	28	35	31	26½	48	53	54
396	Calhoun, Ga.	109	95	84	71	59	44	34	40	32	27½	53	57	56
405	Adairsville, Ga.	112	98	86	73	60	45	35	41	32½	28	54	59	57
415	Kingston, Ga.	115	101	88	75	61	46	36	42	31½	27	55	61	55
426	Cartersville, Ga.	118	103	90	76	62	47	37	43	34	29	56	62	59½
439	Acworth, Ga.	124	107	94	78	64	49	39	45	35	30	58	64	61
453	Marietta, Ga.	127	109	96	79	65	50	38	45	35	30	56	65	62
463	Vinings, Ga.	123	106	94	78	65	51	36	43	33½	29	57	63	59½
474	Atlanta, Ga.	107	92	81	68	56	46	28	35	28	24	48	53	48

The local rates and distances over the Western & Atlantic from Chattanooga and intermediate points are as follows:

Statement Showing Class Rates from Chattanooga to Local Stations on the Western & Atlantic R. R.

Miles.	From Chattanooga To	1.	2.	3.	4.	5.	6.	A	B	C	D	E	H	F.
23	Ringgold, Ga.	22	20	18	16	13	11	11	11	7½	6½	13	16	15
38	Dalton, Ga.	27	24	22	20	16	12	12	12	8	7½	16	20	16½
60	Calhoun, Ga.	33	30	27	24	19	14	14	14	9	8½	19	24	18
69	Adairsville, Ga.	36	33	29	26	20	15	15	15	9	9	20	26	19
79	Kingston, Ga.	39	36	31	28	21	16	16	16	10	9½	21	28	20
90	Cartersville, Ga.	42	38	33	29	22	17	17	17	11	10	22	29	21½
103	Acworth, Ga.	48	42	37	31	24	19	19	19	12	11	24	31	23
117	Marietta, Ga.	51	44	39	32	25	20	20	20	13	12	25	32	24
127	Vinings, Ga.	54	46	41	33	26	21	21	21	13	12	26	33	25
138	Atlanta, Ga.	57	48	43	34	27	22	22	22	12	11	27	34	24

The proportions received by the carriers of the rate from Cincinnati to Atlanta were not testified to, but the Commission is informed that the following divisions were in effect some time ago:

C. N. O. & T. P. to Chattanooga, 336 miles 76 9-10 per cent.
W. & A. to Atlanta, 138 miles 29 1-10 " "
474 100

Out of the rate of $1.07 first class, this would

give to the C. N. O. & T. P. about 76 cents, its regular rate to Chattanooga, and the W. & A. 31 cents, and it gets this proportion by either route from Cincinnati. The local rate of the Western & Atlantic, Chattanooga to Atlanta, is 57 cents per hundred pounds.

3. Other lines which reach Atlanta from Cincinnati are:

Cincinnati, New Orleans & Texas Pacific to Chattanooga, 336 miles; and East Tennessee, Virginia & Georgia to Atlanta, 152 miles, through distance 488 miles.

Louisville & Nashville to Nashville, 295 miles, Nashville, Chattanooga & St. Louis to Chattanooga, 151 miles; East Tennessee, Virginia & Georgia to Atlanta, 152 miles; through distance, 598 miles.

Louisville & Nashville, and Nashville, Chattanooga & St. Louis to Chattanooga, 446 miles, or Cincinnati, New Orleans & Texas Pacific to Chattanooga, 336 miles, and from thence the Chattanooga, Rome & Columbus (now Central of Georgia) to Kramer, 125 miles, and Georgia Pacific to Atlanta, 53 miles; through distances, respectively, 624 miles and 514 miles.

Louisville & Nashville system to Jellico, 216 miles, and East Tennessee, Virginia & Georgia to Atlanta 289 miles; through distance 505 miles.

Either the Cincinnati, New Orleans & Texas Pacific or the Louisville & Nashville is the initial carrier in each of these competing through lines, and both are defendants herein. The Louisville & Nashville owns most of the capital stock of the Nashville, Chattanooga & St. Louis Railway Company, and the latter leases from the state of Georgia and operates the Western & Atlantic Railroad. The through distance over this line is 584 miles. The Louisville & Nashville in sending traffic from Cincinnati to Atlanta prefers this route, while the Cincinnati, New Orleans & Texas Pacific favors the East Tennessee, Virginia & Georgia with which it connects at Chattanooga. The short line to Atlanta from Cincinnati is the Cincinnati, New Orleans & Texas Pacific to Boyce and the Western & Atlantic to Atlanta, distance about 474 miles, but the rate is the same by either line. The Cincinnati, New Orleans & Texas Pacific reaches Chattanooga by its own line over the shorter distance from Cincinnati and its local rate to Chattanooga is the joint rate over the longer line of the Louisville & Nashville, and Nashville, Chattanooga & St. Louis roads.

4. There is competition for the sale of commodities in Atlanta between Cincinnati and other cities, such as Boston, New York, Philadelphia and Baltimore, and the transportation from these Atlantic points is either all rail or water and rail by the Atlantic Coast Line, Seaboard Air-Line, Richmond & Danville, Norfolk & Western and East Tennessee and others. The water lines run to the ports of Norfolk, Portsmouth, Charleston, Savannah, Brunswick, and possibly through Port Royal and Jacksonville. From these ports Atlanta is reached by rail; the South Carolina & Georgia roads from Charleston, the Central of Georgia, the Savannah, Florida & Western and East Tennessee, from Savannah; the East Tennessee from Brunswick; the Port Royal & Augusta Railway from Port Royal, the Queen and Crescent and Louisville & Nashville run from New Orleans, and Mobile stands on similar footing.

There are also rail lines from various Mississippi and Ohio river points, which compete for Atlanta trade such as Vicksburg, Greenville, Memphis, Cairo, Paducah, Evansville and Louisville.

Freight from Cincinnati for Atlanta might reach Atlanta by a rail line over the Chesapeake & Ohio and Richmond & Danville roads, or by water and rail through Baltimore, and steam or sail craft could also be employed to the South Atlantic ports, but these routes are very circuitous, and would only be used under very exceptional conditions. Freight might go from Cincinnati to Memphis by water, and from thence by rail to Atlanta, but it was not made to appear that any appreciable amount of general freight actually does go that way in competition with the all rail route; the distance from Memphis to Atlanta by the Kansas City, Memphis & Birmingham and Georgia Pacific is about 418 miles, only 56 miles less than the through all-rail route from Cincinnati to Atlanta.

There is no competition by independent water routes to Atlanta. Traffic shipped from any Ohio or Mississippi river point, or from a North Atlantic port must pass over a line of one or more railroads in order to reach Atlanta, and such traffic is forwarded as a through shipment and taken either by all rail or by water and rail carriers under through bills of lading and at agreed through rates. The distance from Baltimore to Atlanta through the port of Charleston for the purpose of rate divisions is put at 160 constructive miles by the water way to Charleston, and about 310 miles for the rail carriage from that port to Atlanta, or about 470 miles through. The distance from Baltimore to Atlanta by the Richmond and Danville and Baltimore and Potomac roads, the direct all-rail line is 691 miles.

The rates of the eastern rail lines from New York and other seaboard cities to Cincinnati are very low, for instance, the first class rate New York to Cincinnati is 65 cents. The first class rate New York to Chattanooga is $1.14 and the all rail rate to Atlanta is $1.22.

The present adjustment of rates to Atlanta is the outcome of severe competition between lines leading from competing markets like

St. Louis, Baltimore, Cincinnati, etc., and, with some modifications occurring from time to time, has been in effect for a considerable period. The lines controlling rates to Georgia territory are all members of the Southern Railway & Steamship Association and there is not now any actual competition between them as to rates on through business to points in that territory from one market like Cincinnati, or from different markets like Cincinnati and Baltimore or New York. These rates resulted from agreement between the several lines. The Atlanta rates were agreed upon by the lines with a view of affording to each some share of the traffic.

The Rome Railroad connects Kingston, Ga., with the East Tennessee and Central of Georgia at Rome, Ga. From Marietta the Marietta & North Georgia Railroad runs northerly 204 miles to Knoxville, Tenn., where it connects with the East Tennessee line, and also with the Knoxville, Cumberland Gap & Louisville Railroad which extends 72 miles to Middlesboro, Ky., and there meets the Louisville & Nashville system by which Cincinnati can be reached over a distance of 230 miles from Middlesboro; this gives a possible competing line from Cincinnati to Marietta of 506 miles, and to Atlanta of 527 miles. From Cartersville, Ga., the East and West Railroad of Alabama runs westerly to Rock Mart 22 miles, connecting with the East Tennessee and 16 miles farther it reaches the Central of Georgia at Cedartown. Competition has not forced rates down at Kingston, Marietta or Cartersville. No railroad other than the Western & Atlantic runs to Calhoun, Adairsville or Acworth.

6. On December 27, 1890, the Western & Atlantic Railroad was leased by the state of Georgia to the Nashville, Chattanooga & St. Louis Railway Company for 29 years at an annual rental of $420,012.00. The operation of the leased line has not been separately reported since that date. Prior to that time the road was operated under lease by the Western & Atlantic Railroad Company, at an annual rental of $300,000. The road being owned by the state no report was made of "Capital Stock" or "Cost of Road, Equipment and Permanent Improvement" by the lessee Company. From the report of this road to this Commission for the year ending June 30, 1890, the following statement is compiled:

The "Gross Earnings from Operation" were $1,562,059.76; "Operating Expenses," $1,022,668.70; "Income from Operation," $539,391.06; "Income from Other Sources," $10,615.89; "Total Income" $550,006.95. From this amount there were paid as "Deductions from Income" $312,677.24, $300,000.00 of which was the rental paid by the operating company to the state of Georgia, leaving a "net income" of $237,329.71. From this last named item there was paid $78,225.00 on income bonds for principal and coupons, so that the "Surplus from Operations of year ending June 30, 1890" was $159,104.71. This combined with the "Surplus" from the previous year made the "Surplus on June 30, 1890" $331,077.86. The "Freight Revenue" was $1,255,778.49, from which there were repayments on account of "Overcharge to shippers" $71,737.27, and "Other Repayments," $13,110.53, — Total $84,847.80, leaving "Total Freight Revenue" $1,170,930.69.

A reference to the "Comparative General Balance Sheet" shows that the company operating the road has as "Assets," $8,350.00, "Stocks" and "Bonds of other companies owned," "Cash and Current Assets," $414,611.93; "Materials and Supplies," $4,315.89. Their "Liabilities" were "Current Liabilities," $96,199.96, and "Profit and Loss" ("Surplus"), $331,077.86.

Referring to the "Freight Traffic" of the road, it appears that the "Number of tons carried of freight earning revenue" were 1,083,336; the "Number of tons carried one mile" 125,220,827, which shows the "Average distance haul of one ton" $115\frac{60}{100}$ miles. It appears that of the "Number of tons carried of freight earning revenue," 156,585 tons only originated on the road, and the balance, 926,751 tons was "Received from Connecting Roads and other Carriers." The "Average receipts per ton per mile," were .00,935 cents; "Estimated cost of carrying one ton one mile," .00,555 cents; "Freight earnings per train-mile," $1.03,052; and "Estimated cost of running a freight train one mile," .61,201 cents.

By the foregoing it appears that of the 1,083,336 tons carried that year only 156,585 tons originated on the road, the balance, 926,751 being received from connecting and other carriers; that is to say, less than 15 per cent, or but very little over one seventh of the total tonnage was local business, and some of this was doubtless carried over the whole line. The average distance haul per ton of the entire tonnage was $115\frac{60}{100}$ miles or nearly 84 per cent of the road's length of 138 miles. The bulk of the local business may be assumed to consist of shipments between Chattanooga or Atlanta and intermediate stations, and as the average distance haul per ton of the total tonnage was over 115 miles, say as far as Marietta, only 21 miles from Atlanta, going south, and Ringgold, only 23 miles from Chattanooga, going north, it may be stated as a fact that nearly all of the freight traffic received from other carriers was carried over the entire distance between Chattanooga and Atlanta, the termini of the road.

7. Rates from Cincinnati to Calhoun, Adairsville and Kingston are higher than the rates to

Atlanta on all classes except class 6. To Cartersville, Acworth and Marietta they are higher on all classes. To bring rates to these points down to the level of Atlanta rates will require the following reductions per hundred pounds.

Classes.....	1	2	3	4	5	6	A	B	C	D	E	H	F
Calhoun cts.	2	3	3	3	3		6	5	4	3	5	4	8
Adairsville...	5	6	5	5	4		7	6	4½	4	6	6	9
Kingston.....	8	9	7	7	5		8	7	3½	3	7	8	7
Cartersville ..	11	11	9	8	6	1	9	8	6	5	8	9	11½
Acworth	17	15	13	10	8	3	11	10	7	6	10	11	13
Marietta	20	17	15	11	9	4	10	10	7	6	8	12	14
Vinings	16	14	13	10	9	5	8	8	5½	5	9	10	11½

Rates on classes A, B, C, D, E, H and F are also somewhat higher to Ringgold and Dalton than to Atlanta, but they are lower to these points on classes 1 to 6, inclusive. There is no evidence showing even approximately the amount of traffic carried to Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta, from points on other lines, but as stated in the last finding, the bulk of the traffic received from connecting and other carriers was carried over the whole length of the road, and therefore the number of tons shipped from Cincinnati and other northerly points to Calhoun and other more distant intermediate stations must have been comparatively insignificant.

The rates per ton per mile on the highest and lowest classes from Cincinnati and Chattanooga to the above named stations on the Western & Atlantic road are as follows:

Rates per Ton per Mile.

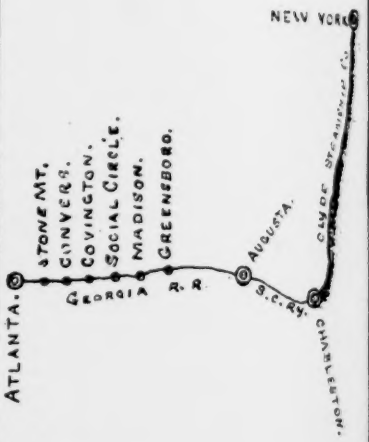
	From Cincinnati.			From Chattanooga.		
	Class 1	Class A	Mls	Class 1	Class A	Mls
Chattanooga	4.52 c.	1.19 c.	336			
Ringgold	5.46 "	1.74 "	359	19.13 c.	9.56 c.	23
Dalton	5.51 "	1.50 "	374	14.21 "	6.31 "	38
Calhoun	5.50 "	1.72 "	396	11.00 "	4.66 "	60
Adairsville	5.53 "	1.73 "	405	10.44 "	4.34 "	69
Kingston	5.54 "	1.74 "	415	9.87 "	4.05 "	79
Cartersville	5.54 "	1.74 "	426	9.33 "	3.78 "	90
Acworth	5.65 "	1.78 "	439	9.32 "	3.69 "	103
Marietta	5.61 "	1.68 "	453	8.73 "	3.42 "	117
Vinings	5.31 "	1.55 "	463	8.50 "	3.30 "	127
Atlanta	4.51 "	1.18 "	474	8.26 "	3.19 "	138

Case No. 314.

8. This route is from New York and other North Atlantic ports over the through water and rail line formed by steamships of the Clyde Steamship Company delivering at Charleston to the South Carolina Railway which connects with and delivers to the Georgia Railroad at Augusta; the points of destination being located on and along the latter line, which terminates at Atlanta. The intermediate points to which rates are complained of as being higher than for the longer distance to Atlanta are Greensboro, Madison, Social Circle, Covington, Conyers and Stone Mountain.

This will hereinafter be called "The Augusta-Atlanta Part Water Route," an outline of which appears by the following diagram:

THE AUGUSTA-ATLANTA PART WATER ROUTE.



The Georgia Railroad is owned by the defendant the Georgia Railroad & Banking Company, and jointly operated under lease by the defendants, the Louisville & Nashville Railroad Company and the Central Railroad & Banking Company of Georgia.

Freight is carried over this route to the points above mentioned under through bills from the point of shipment. The facts before stated with reference to the Chattanooga-Atlanta route in regard to competing lines for Atlanta traffic, including free delivery of freights at that point, apply also to this route.

9. Rates to Augusta and Atlanta are divided between the carriers upon a proportionate basis. Rates to points intermediate between Augusta and Atlanta are combination rates made up of rates to the terminal points with locals added. Charges to these intermediate points are based as follows: Greensboro and Madison on the Augusta rate; Social Circle, classes 1 and B on Atlanta; Class 3, 4, 5, 6, A, C, D, E, H & F on Augusta; class 2 on either Augusta or Atlanta; Covington; Classes 1, 2, 3, A & B, on Atlanta the others on Augusta; Conyers, Classes 1, 2, 3, 4, A, B & H, on Atlanta; Classes 6, C, D, E and F, on Augusta, and Class 3, on either; Stone Mountain, Classes D & F on Augusta, Class C, on either, and the other Classes on Atlanta.

When rates are based on Atlanta, they consist, of the charge through the point of destination to Atlanta, plus the local back. The following table shows the rates:

From New York, Philadelphia, etc., via Charleston to Georgia Railroad Stations.

CLASSES.	1	2	3	4	5	6	A	B	C	D	E	H	F
Augusta	.96	.81	.70	58	47	37	28	42	31½	31	43	54	61
Greensboro	1.37	1.18	1.02	87	69	54	45	59	42½	41	65	83	82½
Madison	1.44	1.23	1.07	89	71	56	47	60	43	42	67	85	84
Social Circle	1.44	1.25	1.09	90	72	57	48	61	43½	42½	68	86	85
Covington	1.41	1.22	1.08	91	73	58	48	60	44	43	69	87	86
Conyers	1.38	1.19	1.05	90	74	59	47	59	44½	43	70	85	87½
Stone Mountain	1.32	1.14	1.01	85	71	58	45	57	47	44	69	80	89½
Atlanta	1.14	.98	.86	78	60	49	36	48	40	39	58	68	78

Local Rates on Georgia R. R. From Augusta.

To	MILES.	CLASSES.										
		1	2	3	4	5	6	A	B	C	D	E	F
Greensboro	83	41	37	32	29	22	17	17	17	11	10	22	21½
Madison	103	48	42	37	31	24	19	19	19	11½	11	24	23
Social C.	119	51	44	39	32	25	20	20	20	12	11½	25	24
Covington	130	54	46	41	33	26	21	21	21	12½	12	26	25
Conyers	140	57	48	43	34	27	22	22	22	13	12½	27	26½
Stone Mt.	155	62	52	46	36	29	24	24	24	14½	13	29	28½
Atlanta	171	64	54	47	37	30	25	25	25	15½	14½	30	31

The evidence does not show how rates to Atlanta are divided between the carriers over this route. The Commission has reason to believe, however, that these rates are divided upon a mileage basis, the Clyde line being allowed 250 miles for the distance to Charleston. On the basis of such mileage the divisions of the rate to Atlanta, $1.14 first class, would be about 51 cents for the Clyde line's 250 miles to Charleston; 29 cents for the South Carolina road's 137 miles to Augusta, and 34 cents for the Georgia road's 171 miles to Atlanta.

The rates per ton per mile to the Georgia Railroad Stations from Augusta on the highest and lowest class rates are as follows.

	Class 1.	Class D.
Greensboro	9.88 cents	2.41 cents
Madison	9.32 "	2.14 "
Social Circle	8.57 "	1.93 "
Covington	8.30 "	1.84 "
Conyers	8.14 "	1.78 "
Stone Mountain	8.00 "	1.68 "
Atlanta	7.49 "	1.70 "

The through first class rate, rail or water and rail, from New York to Chattanooga is $1.14, the same as the water and rail rate to Atlanta, and is in effect over all routes. The first class all rail rate to Atlanta is $1.22, water and rail $1.14; to Augusta the all rail rate is $1.04 and by water and rail it is 96 cents. But the first class rate to Augusta or Atlanta from Cincinnati is $1.07, while to Chattanooga it is 76 cents. From Baltimore to Augusta the all rail charge is 97 cents, while the water and rail rate is 89 cents; to Atlanta the water and rail rate is $1.07 and by all rail it is $1.15. Rates on the other classes are similarly adjusted. A full statement of through rates to various important basing points from New York, Baltimore and Cincinnati is hereinafter set forth.

10. Of the intermediate points mentioned, namely Greensboro, Madison, Social Circle, Conyers, Covington and Stone Mountain, only two, Madison and Social Circle, are junction points. At Madison the Georgia Railroad connects with the branch of the Richmond & Danville running between Macon and Lula on the Atlanta & Charlotte Division of the main line. The distance from Lulu to Madison is 72 miles; the distance from Lula to Atlanta by the Richmond & Danville is 66 miles; practically the same distance. At Social Circle the Georgia Railroad connects with the Gainesville, Jefferson & Southern Railroad which extends from Social Circle to Gainesville, a distance of 52 miles, where it connects with the Atlanta & Charlotte division of the Richmond & Danville line. The distance from Atlanta to Gainesville by the Richmond & Danville is 53 miles, about the same as from Social Circle to Gainesville. The first class water and rail rate from New York to Madison or Social Circle is $1.44 as against $1.14 to Atlanta. The fact that different lines run to these two points has not compelled reductions in rates thereto, but it was stated in evidence that the fact of direct railroad connection between Madison and Macon would soon be likely to cause a lowering of rates to Madison, the short water and rail route from New York being through Brunswick and Macon.

11. The following is taken from the report of the Georgia Railroad Company to the Commission for the year ending June 30, 1891. The report states in regard to "Capital Stock" as follows: "The franchise owned by the lessee organization is not capitalized. Said franchise is a lease of the Georgia R. R. and branches (not including Banking Department) for a period of 99 years from and after April 1, 1881, at a rental of $600,000.00 per annum payable by the lessee organization, $300,000.00 on April 1, and $300,000.00 on October 1, in each year." It has no "Funded Debt." Its "Current Liabilities" are $835,223.35 which includes $600,976.47 which is designated as "Ownership Debt," and is explained by a foot-note. "The owners of the lease have advanced to the lessee organization." The "Cost of Road, Equipment, and Permanent Improvements" is reported by the lessor organization. However, the lessee expended during the year in improvements which it included in "Operating Expenses," $185,399.79. The "Gross Earnings from Operation" were $1,905,159.94.

"Operating Expenses" $1,236,796.65. "Income from Operation" $668,363.29. "Income from other Sources" $60,618.00. "Total Income" $728,981.29. From this "Total Income" there was paid as "Deductions from Income" $610,302.42 of which $600,000.00 was on account of rental paid for the use of the road. This leaves the "Net Income" $118,678.87, which was carried to "Surplus from Operations of Year ending June 30, 1891." On June 30, 1890, there was a "Deficit" of $484,479.47 which would leave the "Deficit on June 30, 1891," $365,800.60. The "Freight Revenue" was $1,291,732.69, from which there were repayments on account of "Overcharge to Shippers" and "Other Repayments" of $16,751.20, which leaves the "Total Freight Revenue" $1,274,981.49. The road also received other freight earnings on account of "Stock Yards," "Elevators," and "Other Items," $538.90, making its "Total Freight Earnings" $1,275,520.39.

The total "Assets" shown in the "Comparative General Balance Sheet," including the "Cash and Current Assets," "Materials and Supplies," and "Profit and Loss" (deficit), were $963,150.70. The "Liabilities," in addition to the "Current Liabilities" heretofore referred to, were "Agents' Deposits" $20,900.00, and "Annual Inventory" $107,027.35.

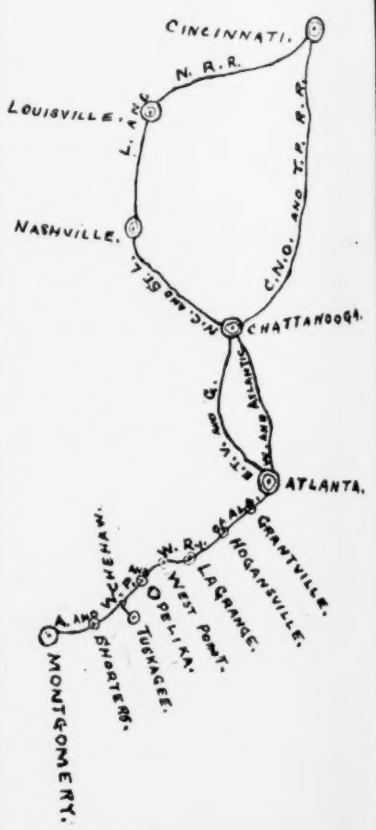
Referring to the "Freight Traffic" of this road, it appears that the "Number of tons carried of freight earning revenue" was 669,784. The "Number of tons carried one mile" was 90,370,108, which indicates that the "Average distance haul of one ton" was 135 miles. The "Average receipts per ton per mile" were .01,411 cents; the "Estimated cost of carrying one ton per mile" was .00,935 cents. Of the "Number of Tons carried of freight earning revenue," it appears that 180,730 tons originated on this road and 489,054 tons were "Received from Connecting Roads and other Carriers."

Case No. 325.

12. In this case the transportation involved is from Cincinnati and other Ohio river points over the Cincinnati, New Orleans & Texas Pacific to Chattanooga, or else to the same point on the Louisville & Nashville and Nashville, Chattanooga & St. Louis roads, and from Chattanooga to Atlanta by either the East Tennessee or the Western & Atlantic; from Atlanta the traffic goes to the several destinations on the lines of the Atlanta & West Point and Western Railway of Alabama, to wit, Grantville, Hogansville, La Grange, West Point and Shorters, shorter distance points to which rates are complained of and Opelika and Montgomery, the longer distance points, Opelika being nearer, however, than Shorters to Atlanta.

This route will be called the Atlanta & West Point All-Rail Route, and is shown below:

THE ATLANTA & WEST POINT ALL-RAIL ROUTE.



Traffic is carried under through bills to the several destinations, but the Nashville, Chattanooga & St. Louis does not participate in traffic to points between Montgomery and West Point except on consignments from points on the Ohio river below Henderson, and such consignments probably go *via* the Louisville & Nashville from Nashville and through Montgomery instead of Atlanta; but freight from any other Ohio river point for stations on the Atlanta & West Point, including West Point, may go over its line through Chattanooga and be forwarded *via* Atlanta. Therefore traffic from points below Henderson to points on the Western Railway of Alabama, except West Point, going over the N. C. & St. L. does not pass through the intermediate points above named, and such points are longer instead of shorter distance points as to traffic so shipped and routed.

The Louisville & Nashville operates its own lines from Cincinnati, Louisville, Owensboro, Evansville, Henderson and other points on the Ohio river through Nashville, Decatur, and Birmingham to Montgomery, and freights from those points consigned over its road for Montgomery and points on the Western Railway of Alabama, are carried over this line instead of the route through Chattanooga and Atlanta mentioned in the complaint, but it does send traffic by the route complained of to Atlanta & West Point stations east of West Point. West Point freight goes over the Montgomery route unless directed to be forwarded *via* Atlanta. The distance from Cincinnati to Montgomery by the Louisville & Nashville is 600 miles; by the Atlanta & West Point route it is 649 miles; but the shortest distance to Montgomery from Cincinnati is by the Cincinnati, New Orleans & Texas Pacific to Birmingham, 478 miles, and the Louisville & Nashville from that point to Montgomery 96 miles; total 574 miles. Montgomery can therefore be reached from Cincinnati and other Ohio river points over shorter routes than the one involved in this controversy.

The Louisville & Nashville connects at Birmingham with the Columbus & Western Railroad, operated by the Central of Georgia, and extending from that point to Opelika and Columbus. The distance from Cincinnati to Birmingham by the Louisville & Nashville is 504 miles, and from Birmingham to Opelika by the Columbus & Western, it is 128 miles, a total of 632 miles. The distance from Cincinnati to Opelika by the Atlanta route is 583 miles; by the Louisville & Nashville to Montgomery and Western of Alabama, it is 666 miles; and by the Cincinnati, New Orleans & Texas Pacific through Montgomery it is 640 miles. The Cincinnati, New Orleans & Texas Pacific is the short line to Birmingham from Cincinnati, being 478 miles, and in connection with the Columbus & Western Opelika is 606 miles from Cincinnati by this route. The distance from Montgomery to Shorters, one of the shorter distance points mentioned in the complaint, is 23 miles, and the mileage from Cincinnati to Shorters *via* Montgomery is only 597 miles, while *via* Atlanta it is 626 miles. The evidence does not show how the Cincinnati, New Orleans & Texas Pacific routes its traffic to stations on the Western Railway of Alabama between Montgomery and West Point. The shortest distance from Cincinnati to West Point is by the Atlanta route, 561 miles, and the bulk of freight for that point may go that way when shipped over the Cincinnati, New Orleans & Texas Pacific.

13. Montgomery is situate upon the Alabama river which empties into Mobile Bay. There is possible direct water communication between points on the Ohio river and Montgomery, and some water competition on freight from Western and Ohio river points has existed for six or seven years. The all water competition was not shown to be active under railroad rates now in effect. The Mobile & Ohio Railroad carries freight from St. Louis to Mobile at the prevailing low rate, and this can come up the river to Montgomery.

Two lines of steamers run up the Alabama river from Mobile. There is water transportation of freights from eastern points to Mobile also, one line being the New York & Mobile Steamship Company. No water route extends to Opelika, but the Apalachicola and Chattahoochee rivers are navigable from Apalachicola up to Columbus except during a portion of the summer. It was not shown, however, that this route is much used except for lumber ships, or that it can be extensively employed by all vessels until the channel is materially improved. Columbus is 29 miles from Opelika, and connected therewith by the Columbus & Western road, operated by the Central of Georgia. There is competition by eastern cities, as Baltimore, Philadelphia, New York and Boston over all rail and water and rail lines through South Atlantic ports for the sale of traffic in Montgomery, Opelika, and all points in Georgia and Alabama territory.

14. Rates to West Point, Opelika and Montgomery are divided between the carriers upon an agreed basis, but those in effect to Grantville, Hogansville, La Grange and Shorters are found by the addition of locals and rates to Atlanta, Montgomery or Opelika, whichever gives the lowest combination. Opelika rates are adjusted with reference to Montgomery rates, and West Point rates are based upon either Montgomery or Opelika, whichever gives the lowest rates, but West Point rates are the subject of agreement between the lines.

The following table shows rates from Cincinnati, O., to stations on the Atlanta & West Point and Western Railway of Alabama:

Rates from Cincinnati, O., to Stations on Atlanta & West Point Railroad and Western Railway of Alabama.

Cincinnati, O., to Atlanta & West Point R. R.	Classes.													Per bbl.
	Miles	1	2	3	4	5	6	A	B	C	D	E	H	F
Atlanta,	474	1.07	.92	.81	.68	.57	.46	.28	.35	.28	.24	.48	.53	.48
Grantville,	525	1.40	1.21½	1.08½	.92	.76	.60½	.42½	.49½	.37	.32	.68	.77	.65½
Hogansville,	532	1.43½	1.25	1.10½	.94½	.77	.61½	.43½	.50½	.37	.32½	.69	.79½	.66
La Grange,	545	1.46½	1.28½	1.13	.96½	.78	.62½	.44½	.51½	.37½	.33	.70	.81½	.67
West Point,	561	1.35	1.18	1.05	.88	.73	.59	.41	.50	.38	.33½	.68	.65	.68

Western Ry. of Alabama.														
Opelika,	583	1.17	1.02	.91	.76	.63	.52	.32	.38	.31	.27	.54	.58	.54
Shorters,	626	1.36	1.28	1.12	.91	.76	.60	.45	.48	.39	.32	.70	.57	.72
Montgomery,	649	1.08	1.02	.88	.71	.59	.47	.32	.33	.26	.22	.52	.37	.44

(See analysis of mileage to Shorters and Opelika above set forth).

Rates as above taken from Louisville and Nashville, S. E., No. 20, effective March 16, 1892, and Louisville Tariff of Arb. No. 012, S. E., January 12, 1892.

How the Rates are Made.

	Miles from Atlanta.	Classes.												
		1	2	3	4	5	6	A	B	C	D	E	H	F
Grantville, local	51	.33	.29½	.27½	.24	.20	.14½	.14½	.14½	.9	.8	.20	.24	.17½
Atlanta, through		1.07	.92	.81	.68	.56	.46	.28	.35	.28	.24	.48	.53	.48
Grantville, through		1.40	1.21½	1.08½	.92	.76	.60½	.42½	.49½	.37	.32	.68	.77	.65½
Hogansville, loc.	58	.36½	.33	.29½	.26½	.21	.15½	.15½	.15½	.9	.8½	.21	.26½	.18
Atlanta, through		1.07	.92	.81	.68	.56	.46	.28	.35	.28	.24	.48	.53	.48
Hogansville, thro'		1.43½	1.25	1.10½	.94½	.77	.61½	.43½	.50½	.37	.32½	.69	.79½	.66
La Grange, local	71	.39½	.36½	.32	.28½	.22	.16½	.16½	.16½	.9½	.9	.22	.28½	.19
Atlanta, through		1.07	.92	.81	.68	.56	.46	.28	.35	.28	.24	.48	.53	.48
La Grange, through		1.46½	1.28	1.13	.96½	.78	.62½	.44½	.51½	.37½	.33	.70	.81½	.67
West Point, thro'	87	1.35	1.18	1.05	.88	.73	.59	.41	.50	.38	.33½	.68	.65	.68
Opelika, through	109	1.17	1.02	.91	.76	.63	.52	.32	.38	.31	.27	.54	.58	.54
Shorters, local	152	.28	.26	.24	.20	.17	.13	.13	.15	.13	.10	.18	.20	.28
Montgomery thro'	175	1.08	1.02	.88	.71	.59	.47	.32	.33	.26	.22	.52	.37	.44
Shorters, through		1.36	1.28	1.12	.91	.76	.60	.45	.48	.39	.32	.70	.57	.72
Montgomery, thro'	175	1.08	1.02	.88	.71	.59	.47	.32	.33	.26	.22	.52	.37	.44

Rates as above taken from Louisville & Nashville, S. D., No. 20, effective March 16, 1892, and Louisville Tariff of Arb. No. 012, S. E. effective January 1st, 1892.

The following statement shows the rate per ton per mile on the highest and lowest classes, according to the shortest mileage over any route from Cincinnati.

To	Miles	Class 1. cts.	Class D. cts.
Atlanta	474	4.51	1.01
Grantville	525	5.33	1.22
Hogansville	532	5.39	1.22
La Grange	545	5.38	1.21
West Point	561	4.81	1.19
Opelika	583	4.01	0.93
Shorters	597	4.55	1.07
Montgomery	574	3.76	0.76

Following is a statement showing the rate per ton per mile to local stations from points on which rates to these local stations are based:

Rate per Ton per Mile of Local Rates.

From Atlanta, To	Class 1.	Class D.
Grantville	12.94 cents	3.14 cents
Hogansville	12.58 "	2.93 "
La Grange	11.12 "	2.53 "
From Montgomery to Shorters,	24.35 "	8.70 "

15. The Atlanta & West Point and Western Railway of Alabama are corporations independent of each other, but for purposes of economy the roads are operated under one set of officers and the same crews, cars and engines run over both lines. The following financial statements are made up from reports to the Commission of these companies for the year ending June 30, 1891:

Atlanta & West Point Railroad Company:—The "Capital Stock" of this road was $1,232,200.00. "Funded Debt" $1,232,200.00; "Current Liabilities" $95,067.78; "Cost of Road, Equipment, and Permanent Improvements" $2,464,400.00. The "Gross Earnings from Operation" were $483,053.50; "Operating Expenses" $343,689.45; "Income from Operation" $139,364.05. There was paid from this as "Deductions from Income" $86,878.32, leaving "Net Income" $52,485.73. There was also paid a dividend of 6 per cent on Common Stock of $73,932.00, leaving the "Deficit from Operations of Year ending June 30, 1891,"

$21,446.27. There was a "Surplus on June 30, 1890," of $124,359.28, which would make the "Surplus on June 30, 1891," $102,913.01. The "Freight Revenue" was $274,651.80, from which there was repaid as "Overcharge to Shippers" $7,100.83, which leaves the "Total Freight Revenue" $267,550.97. In addition to the "Cost of Road" heretofore referred to, the road returns in its "Comparative General Balance Sheet" as "Assets," "Cash and Current Assets" $180,337.85; "Materials and Supplies" $17,642.94. Its only "Liabilities" in addition to the "Capital Stock," "Funded Debt" and "Current Liabilities" hereinbefore referred to, are the "Profit and Loss" (surplus), $102,913.01. The "Grand Total" of the Balance Sheet is $2,662,380.79.

Referring to the "Freight Traffic," it appears that the "Number of tons carried of freight earning revenue" was 196,300. The "Number of tons carried one mile" was 13,761,055, which indicates that the "Average distance haul of one ton" was 70 miles. The "Average receipts per ton per mile" were .01,944 cents; the "Estimated cost of carrying one ton per one mile," .01,245 cents. Of the "Number of tons carried of freight earning revenue" 109,716 tons originated on this road and 86,584 tons were "Received from Connecting Roads and other Carriers."

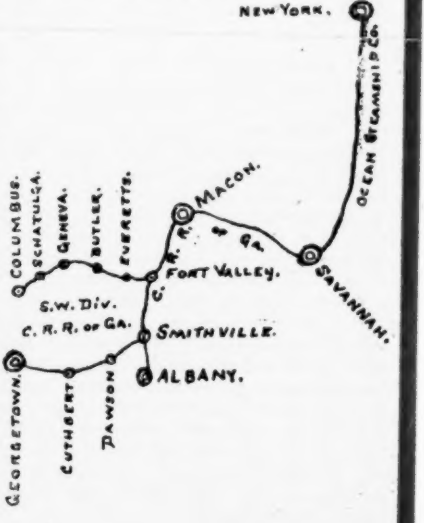
Western Railway Company of Alabama: The "Capital Stock" of this road is $3,000,000.00; "Funded Debt" $1,543,000.00; "Current Liabilities" $168,771.38. The "Cost of Road, Equipment and Permanent Improvements" is $4,543,000.00. The "Gross Earnings from Operation" were $572,220.49; "Operating Expenses" $400,911.19, which leaves an "Income from Operation" of $171,309.30. The "Income from Other Sources" was $6,460.46, making the "Total Income" $177,769.76. From this there was paid as "Deductions from Income" $137,617.31, leaving the "Net Income" $40,152.45, which was carried to "Surplus from Operations of Year ending June 30, 1891." The "Surplus on June 30, 1890," was $47,990.40, which would make the "Surplus on June 30, 1891," $88,142.85. The "Freight Revenue" was $340,802.21, from which there were repayments on account of "Overcharge to Shippers" of $5,499.29, leaving the "Total Freight Revenue" $335,302.92.

Reference to the "Comparative General Balance Sheet," discloses that in addition to the "Cost of Road" heretofore referred to, the road has "Assets" of "Cash and Current Assets" $204,792.87; "Materials and Supplies" $52,121.36, making the "Grand Total" of the "General Balance Sheet" $4,799,914.23. Its "Liabilities," in addition to the "Capital Stock," "Funded Debt" and "Current Liabilities," were the "Profit and Loss" (surplus), $88,142.85. Reference to the "Freight Traffic" shows that the "Number of tons carried of freight earnings revenue" was 320,428. The "Number of tons carried one mile" was 20,323,159, which shows that the "Average distance haul of one ton" was 63 miles. The "Average receipts per ton per mile" were .01,650 cents, and the "Estimated cost of carrying one ton one mile" was .01,061 cents. Of the "Number of tons carried of freight earning revenue," 148,474 tons originated on this road, and 171,954 tons were "Received from Connecting Roads and other Carriers."

Case No. 315.

16. This was the next case heard, and the route is a water and rail line from New York and other North Atlantic ports by steamships of the Ocean Steamship Company to Savannah, which delivers to the Central Railroad of Georgia for carriage to points on its Southwestern Division beginning at Macon. The points involved are situate on two terminating roads both in the same division of the Central of Georgia system. These points are, 1, Everett's, Butler, Geneva and Schatulga, shorter distance points, and Columbus, the longer distance point, 2, Smithville, Dawson and Cuthbert, shorter distance points, and Georgetown, the longer distance point. These terminal roads will hereinafter be called the Columbus Branch and the Georgetown Branch, respectively. A drawing of this route is here given under the title of:

THE MACON-COLUMBUS-GEORGETOWN PART WATER ROUTE.



The Central Railroad of Georgia has close traffic relations with the Ocean Steamship line. Traffic over this route is carried under through bills to the several destinations.

17. Rates to the shorter and longer distance points are straight rates and are not based on a combination of rates to and from basing points. The highest first class rate to any point is $1.31 and the lowest is $1.14, except to Macon, $1.09, and Albany, which takes the Macon rate. Macon is a shorter distance from New York than any of the stations on this division, and Albany is not "on the same line" with the shorter and longer distance points directly involved in this case. The table shown below sets forth the rates to various points on this division, but as above stated rates are complained of only to Everett's, Butler, Geneva and Schatulga on the Columbus Branch, and Smithville, Dawson and Cuthbert on the Georgetown Branch.

Statement showing Class Rates from New York, N. Y., Philadelphia, Pa., etc., to the following stations on the Southwestern Division of the Central Railroad of Georgia, January 20, 1892.

Distance from Macon, Ga., To	Miles.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	Per Bbl. F.
Everett's	36	.131	.111	.98	.82	.67	.56	.46	.52	.40	.37	.67	.78	.75½
Butler,	50	.131	.111	.98	.83	.69	.56	.46	.53	.41	.38	.67	.78	.78
Geneva,	70	.131	.111	.98	.83	.69	.56	.46	.54	.42	.39	.67	.78	.80
Schatulga,	91	.131	.111	.98	.83	.69	.56	.46	.55	.43	.40	.67	.78	.82
Columbus,	100	.114	. 98	.86	.73	.60	.49	.36	.48	.40	.39	.58	.68	.78
To Macon		.109	. 96	.83	.70	.59	.48	.34	.47	.35	.34	.52	.60	.68
Fort Valley,	29	.114	. 98	.86	.73	.60	.49	.36	.48	.40	.37	.58	.68	.75½
Marsh'v.	37	.114	. 98	.86	.73	.60	.49	.36	.48	.40	.37	.58	.68	.75½
Montezuma,	49	.114	. 98	.86	.73	.60	.49	.36	.48	.40	.38	.58	.68	.78
Americus,	71	.114	. 98	.86	.73	.60	.49	.36	.48	.40	.39	.58	.68	.78
Leesburgh,	96	.131	.111	.98	.83	.69	.56	.46	.55	.41	.40	.67	.78	.81
Albany,	107	.109	. 96	.83	.70	.59	.48	.34	.47	.35	.34	.52	.60	.68
Smithville,	83	.131	.111	.98	.83	.69	.56	.46	.55	.41	.39	.67	.78	.80
Dawson,	98	.131	.111	.98	.83	.69	.56	.46	.55	.42	.40	.67	.78	.81
Cuthbert,	118	.131	.111	.98	.83	.69	.56	.46	.56	.42	.39	.67	.78	.82
Georgetown,	141	.114	. 98	.86	.73	.60	.49	.36	.48	.40	.39	.58	.68	.78

At Columbus the following lines center: The Central of Georgia, Southwestern Division, and The Columbus & Western Division, which runs to Birmingham; Georgia Midland & Gulf to McDonough, Columbus Southern to Albany, Columbus & Rome to Greenville, and Mobile and Girard to Searight, the two latter being also a part of the Central of Georgia system. Georgetown is the first station east and two miles from Eufaula, the terminus of the Georgetown branch, and takes Eufaula rates. The Montgomery & Eufaula division of the Central of Georgia extends from Eufaula to Montgomery. Everett's, Butler and Schatulga have no railroad communication except the Central of Georgia. Smithville is the junction of the Albany and Eufaula, or Georgetown, branches. Dawson has connection between the Central of Georgia and Columbus Southern. Cuthbert is the junction of the Georgetown road with a branch for Fort Gaines.

19. There is possible competition to Columbus and Eufaula from New York by steamship to Jacksonville, rail to the Chattahoochee river, and steamer up that river to Eufaula and Columbus, or by water all the way if a line were established, but under present rates and navigable conditions the river route is not a dangerous competitor. The various lines all-rail and water and rail, which penetrate this territory are competitors for the carrying trade, but the Central system controls the rates to Eufaula and Columbus, in a large degree, except by the river.

20. For the year ending June 30, 1890 The "Average receipts per ton per mile" of the Central of Georgia Railroad System was .01,902 cents, and the "Estimated cost of carrying one ton one mile" a was .01,428 cents, .00,474 cents, nearly half a cent less than the rate received Its "Net Income" was $1,026,597.66, from which was paid an 8 per cent dividend on $7,500,000, the entire "Capital Stock," amounting to $600,000 and the balance $426,597.66 was carried to the "surplus" account, which on June 30, 1890, was $950,113.22. The "Number of tons carried of freight earning revenue" was 1,705,683, of which 944,521 tons originated on the road, and 761,162 tons were "Received from Connecting Roads and other Carriers." This report is based on an operated mileage of 1,317.46 miles. The report was made by the "Central Rail Road and Banking Company of Georgia."

Case No. 316.

21. This is an all rail route from Cincinnati and Ohio river points over the Cincinnati, New Orleans & Texas Pacific Railway to Chattanooga, the East Tennessee, Virginia & Georgia to Atlanta and the Atlanta Division of the Central Railroad of Georgia to the points of consignment mentioned in the complaint as

Jonesboro, Hampton, Griffin, Barnesville and Forsyth, intermediate stations, and Macon the terminus, to which, though a longer distance, lower rates are charged than to the shorter distance points mentioned. This route is here termed the Atlanta-Macon All Rail Route, and is as follows:

ATLANTA-MACON ALL RAIL ROUTE.

Traffic goes over this route under through bills of lading to the various destinations named above. By this line Atlanta is 488 miles from Cincinnati and 103 miles from Macon, making the distance to Macon from Cincinnati 591 miles. There is no water route to Macon, but the same strong competition exists between carriers and markets for the Macon as for the Atlanta trade.

22. The same rates are in effect to both Atlanta and Macon from Cincinnati, except on classes B, C, D, E, H and F, which are two cents higher to Macon. Some of the rates to intermediate points are based on rates to Atlanta or Macon, plus the locals therefrom, especially rates on the higher classes, the others are straight rates. A table of these rates with distances from Cincinnati is here given:

Rates taken from Cincinnati, New Orleans & Texas Pacific R. R. Supplement No. 2. Through Tariff No. 15, effective August 24, 1891, and through Freight Tariff No. 15 effective April 16, 1891.

The rates per ton per mile on the highest and lowest classes are as follows:

To	Class 1.	Class D.
Atlanta	4.38 Cents	.98 Cents
Jonesboro	5.07 "	1.18 "
Hampton	5.12 "	1.19 "
Griffin	5.23 "	1.20 "
Barnesville	5.07 "	1.18 "
Forsyth	4.64 "	1.13 "
Macon	3.62 "	0.98 "

23. Jonesboro, Hampton and Forsyth have no other railroad service than that afforded by the Central of Georgia roads. Griffin has railroad connection with the Georgia Midland and Gulf, and is also the junction of the Atlanta and Chattanooga divisions of the Central of Georgia. The distance to Griffin from Cincinnati over the C. N. O. & T. P. to Chattanooga and the Central of Georgia from Chattanooga is 534 miles, only 3 miles greater than by the way of Atlanta. Barnesville is the junction of the Atlanta Division and the Upson County Branch, a 16 mile road to Thomastown. On freights from New York, Philadelphia & Boston, Griffin enjoys the Atlanta water and rail rate of $1.14 first class, and also the Atlanta water and rail rate from Baltimore of $1.07, but from Cincinnati its first class rate is as above stated $1.39. Macon has a rate of $1.09 from New York, and $1.02 from Baltimore.

Case No. 326.

24. This case was heard last of all, but as the remaining case refers only to one commodity, while this, like the others, extends to all classes of freights, the facts pertaining to it will be stated now. The route here is water and rail from New York and other North Atlantic ports *via* the Clyde Steamship line to Charleston, the South Carolina Railway to Augusta, the Georgia Railroad to Atlanta, and the Atlanta & West Point and Western Railway of Alabama to the destinations mentioned in the complaint, which are Newnan, Grantville, Hogansville, La Grange and West Point, shorter distance stations and Opelika the longer distance point. This route is distinguished by the name:

From Cincinnati, O.,	Miles		Classses, rates in cents per 100 pounds. 1	2	3	4	5	6	A	B	C	D	Per bbl. E	H	F
To Atlanta	488	Ga.	107	92	81	68	56	46	28	35	28	24	48	53	48
Jonesboro	509	"	129	112	99	83	69	57	39	46	35	30	61	68	61½
Hampton	520	"	133	115	102	87	71	58	40	47	35½	31	63	72	63
Griffin	531	"	139	121	107	87	72	57	42	49	36½	32	66	73	65½
Barnesville	548	"	139	121	107	91	75	60	42	50	37	32½	69	78	66
Forsyth	564	"	131	114	101	86	70	58	40	48	36½	32	65	73	65
Macon	591	"	107	92	81	68	56	46	28	38	33	29	50	55	58

"THE ATLANTA & WEST POINT PART WATER ROUTE."

25. The rates are as follows:

From New York, N. Y. Philadelphia, Pa.		Classes, Rates in cents per 100 lbs.											Per bbl.
		1	2	3	4	5	6	A	B	C	D	E	H	F
To Atlanta West Point R. R.														
Atlanta	Ga.	114	98	86	73	60	49	36	48	40	39	58	68	78
Newnan	"	131	111	98	83	69	56						78	
Grantville	"	147	128	114	97	80	64						94	
Hogansville	"	151	131	116	100	81	65						97	
La Grange	"	154	135	118	102	82	66						99	
West Point	"	142	124	110	93	77	62						88	
Western R. R. of Alabama.														
Opelika, Ala.		114	98	86	73	60	49	36	48	40	39	58	68	78

Rates taken from Tariff issued by R. D. Carpenter, Commissioner of Associated Railways of Virginia and the Carolinas for March, 1892 (How to Ship).

Rates by the way of the Ocean Steamship line to Savannah and the Central of Georgia and connections are substantially the same.

Except Newnan, the stations in this case were considered in the findings under Case 325, relating to traffic from Cincinnati over the Atlanta & West Point all rail route.

26. The distance by the Central of Georgia from Savannah to Atlanta is 295 miles, 13 miles less than the distance from Charleston to Atlanta. The distance from Savannah to Augusta by the Central of Georgia is 132 miles, 5 miles less than the mileage from Charleston to Augusta by the South Carolina road. The distance from Savannah to Opelika by the Central of Georgia through Macon and Columbus is 321 miles, 26 miles less than the distance to Newnan, the first shorter distance point, over the route from Charleston, and only 13 miles greater than the distance from Charleston to Atlanta. The Central of Georgia route Savannah to Opelika is with the exception of the 36 miles from Columbus, wholly in the state of Georgia. Freights can be shipped by the Central of Georgia from Savannah through Opelika to West Point and La Grange, and carried over a less distance than by the route from Charleston or the routes from Savannah through Augusta or Atlanta. It is only 6 miles farther to Hogansville *via* Savannah and Opelika than from Charleston; only 20 miles greater distance to Grantville, and but 44 miles farther to Newnan. There is a still shorter route from Savannah to Opelika, namely the Central of Georgia to Lyons, 75 miles, the Savannah, Americus & Montgomery, called the "Sam" road, to Americus, 124 miles, and the Central system to Opelika, 93 miles, or 292 miles in all. It is a less distance by this route from Savannah through Opelika to all the shorter distance stations named in the complaint, except Newnan, than from Charleston.

From the port of Brunswick, Ga., Opelika can be reached by the Savannah, Florida & Western to Albany, 169 miles, and the Central of Georgia to Opelika, 124 miles, or a distance of 298 miles through. It is nearer from Brunswick *via* Opelika to all the shorter distance points in this case, except Newnan, than to these points from Charleston *via* Atlanta, and it is only 21 miles farther to Newnan from Brunswick than from Charleston.

But Savannah traffic can also reach Newnan by the Central of Georgia to Griffin and its Chattanooga division over a short distance of 288 miles, 7 miles less than the distance from Savannah to Atlanta and 20 miles less than from Charleston to Atlanta. Newnan is 39 miles from Atlanta, and therefore the mileage from Charleston to Newnan is 347 miles as against only 288 miles from Savannah.

Case No. 324.

27. This case relates to rates on fertilizers from Charleston to points on the Atlanta & West Point and Western Railway of Alabama. The route from Charleston is all rail and the same as the rail portion of the route in Case No. 326. The destinations are also the same. This route, denominated The Atlanta & West Point Fertilizer Route, is set out in the diagram below:

"THE ATLANTA & WEST POINT FERTILIZER ROUTE."

Traffic is shipped under through bills to the various points.

28. The rates and distances from Charleston are as follows:

Rates on Fertilizers from Charleston.

To	Distance	Rate per ton Dollars.	Rate per ton per mile Cts.
Atlanta	308	3.14	1.02
Newnan	347	3.25	0.93
Grantville	359	3.72	1.04
Hogansville	366	3.82	1.04
La Grange	379	3.89	1.03
West Point	395	3.70	0.94
Opelika	417	3.00	0.72
Montgomery	483	3.00	0.62

These rates are the same as those in effect from Savannah to the same points over a route to the shorter distance points mentioned which may be wholly within the state of Georgia, and the rates from Savannah are subject to approval by the Georgia Railroad Commission, the complainant in this case.

The fertilizer rate to Newnan where competition in carrying exists by the Central of Georgia is only 11 cents more than the Atlanta rate, while to Grantville only 12 miles farther from Atlanta it is 58 cents above Atlanta and 47 cents higher than the rate to Newnan.

29. Fertilizers are low grade freight and much of it comes by water to South Atlantic ports. The rail rate per ton on fertilizers to all stations beyond Atlanta on the Atlanta & West Point road, including West Point, is the same from Richmond, West Point, Norfolk, Portsmouth or Pinners Point, namely, $4.35 per ton, and it is $3.89 from Wilmington, the same as the rate from Charleston to La Grange and West Point. The rate to Opelika from Wilmington is $3.89 and from the other ports it is $4.25 per ton.

31. The following statements show rates by all-rail and rail and water routes from New York, Baltimore and Cincinnati to the more important basing points in the territory under consideration.

Statement showing Freight Rates on Classified Traffic from New York, Baltimore and Cincinnati to various Southern points named, in effect at the present time.

Distances.	From	To	Route.	Rates in cents per hundred pounds. 1	2	3	4	5	6	A	B	C	D	E	H	per bbl. F
8	New York	Chattanooga	Rail and Water.	114	98	86	73	60	49	36	48	40	39	58	68	78
804	New York	Chattanooga	All Rail	114	98	86	73	60	49	36	48	40	39	58	68	78
"	New York	Atlanta	Rail and Water.	114	98	86	73	60	49	36	48	40	39	58	68	78
857	New York	Atlanta	All Rail	122	104	91	77	63	51	38	50	42	41	61	72	82
"	New York	Augusta	Rail and Water.	96	81	70	58	47	37	28	42	31½	31	43	54	61
802	New York	Augusta	All Rail	104	87	75	62	50	39	30	44	33¼	33	46	58	65
"	Baltimore	Atlanta	Rail and Water.	107	92	81	68	56	46	34	45	37	36	55	65	72
906	Baltimore	Atlanta	All Rail	115	98	86	72	59	48	36	47	39	38	58	69	76
474	Cincinnati	Atlanta		107	92	81	68	56	46	28	35	28	24	48	53	48
"	Baltimore	Chattanooga	Rail and Water.	106	90	83	70	57	46	33	45	37	36	55	65	72
659	Baltimore	Chattanooga	All Rail	106	90	83	70	57	46	33	45	37	36	55	65	72
336	Cincinnati	Chattanooga		76	65	57	47	40	30	20	26	23	19	34	33	38
"	Baltimore	Augusta	Rail and Water.	89	75	65	53	43	34	26	39	28¼	28	40	51	58
613	Baltimore	Augusta	All Rail	97	81	70	57	46	36	28	41	30¼	30	43	55	50
645	Cincinnati	Augusta		107	92	81	68	56	46	28	37	30	26	50	55	52
"	New York	Macon	Rail and Water.	109	96	83	70	59	48	34	47	35	34	52	60	68
927	New York	Macon	All Rail	117	102	88	74	62	50	36	49	37	36	55	64	72
"	New York	Birmingham	Rail and Water.	114	98	86	73	60	49	36	48	40	39	58	68	78
991	New York	Birmingham	All Rail	114	98	86	73	60	49	36	48	40	39	58	68	78
"	New York	Montgomery	Rail and Water.	114	98	86	73	60	49	36	48	40	39	58	68	78
1052	New York	Montgomery	All Rail	114	98	86	73	60	49	36	48	40	39	58	68	78
"	New York	Opelika	Rail and Water	114	98	86	73	60	49	36	48	40	39	58	68	78
986	New York	Opelika	All Rail	122	104	91	77	63	51	38	50	42	41	61	72	82

Statement showing Freight rates on Classified Traffic from New York, Philadelphia and Baltimore to South Atlantic points named, in effect at present time.

FROM	TO	VIA ALL-RAIL ROUTES. CLASSES. In Cents Per 100 Lbs.												Per Bbl.
		1	2	3	4	5	6	A	B	C	D	E	H	F
New York and Philadelphia	Charleston	78	64	53	38	31	26½	26½	26½	26½	26½	35	36½	6½
Baltimore	Charleston	78	64	53	38	31	22	22	22	22	22	35	32	4
New York and Philadelphia	Savannah	78	64	53	38	31	26½	26½	26½	26½	26½	35	36½	6½
Baltimore	Savannah	78	64	53	38	31	22	22	22	22	22	35	32	4
New York, Philadelphia and Baltimore	Brunswick	81	67	60	54	48	32	32	32	32	32	43	34	6
New York, Philadelphia and Baltimore	Jacksonville	106	90	76	57	47	39	38	38	38	37½	47	46	7½

Statement showing Freight Rates on Classified Traffic from New York, Philadelphia and Baltimore to the South Atlantic points named, in effect at present time.

FROM	TO	VIA RAIL AND WATER ROUTES. CLASSES. In Cents Per 100 Lbs.												Per Bbl.
		1	2	3	4	5	6	A	B	C	D	E	H	F
New York and Philadelphia	Charleston	70	58	48	34	28	24½	23½	23½	23½	23	32	30	6
Baltimore	Charleston	60	50	45	34	26	18	17	17	17	17	30	26	3
New York and Philadelphia	Savannah	70	58	48	34	28	24½	23½	23½	23½	23	32	30	6
Baltimore	Savannah	70	58	48	34	28	20	20	20	20	20	32	28	4
New York and Philadelphia	Brunswick	73	61	55	50	45	30	30	30	30	30	40	30	6
Baltimore	Brunswick	73	61	48	34	27	20	18½	18½	18½	18	32	32	3
New York and Philadelphia	Jacksonville	73	61	48	34	28	24½	23½	23½	23½	23	32	32	6
Baltimore	Jacksonville	73	61	48	34	28	23½	22½	22½	22½	22	32	32	6

Statement showing Freight Rates on Classified Traffic from Cincinnati, O., to the South Atlantic points named, in effect at present time.

FROM	TO	CLASSES. In Cents Per 100 Lbs.												Per Bbl.
		1	2	3	4	5	6	A	B	C	D	E	H	F
Cincinnati, O.	Charleston Savannah Brunswick Jacksonville	95	80	75	70	58	46	35	35	27	23	40	40	8

Statement showing present Freight Rates via Trunk Line Routes on Classified Traffic to Cincinnati, Ohio, from the Eastern cities named.

FROM	TO	CLASSES. In Cents Per 100 Lbs.					
		1	2	3	4	5	6
New York or Boston	Cincinnati	65	57	44	30	26	22
Philadelphia	Cincinnati	59	51	42	28	24	20
Baltimore	Cincinnati	57	49	41	27	23	19

32. The complainant, the Georgia Railroad Commission, under authority conferred by the Legislature of the state of Georgia, has jurisdiction of railroad transportation wholly within the borders of that state, but that Commission has no control over passengers or property transported wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management or arrangement for a continuous carriage or shipment, between points in different states or territories of the United States. The defendants in these several cases arrange for the through carriage of property from Ohio river points, or North Atlantic ports, as the case may be, to the destinations named in the complaint. The initial line accepts traffic for through carriage and issues through bills at rates of charge for the whole distance. The carriers concerned receive the property and transport

it on to the point of destination where it is delivered to the consignee who pays to the terminal carrier the total expense of transportation, unless it has been prepaid by the shipper, and the money so collected is paid by the carrier receiving it, after deducting its own share, to the other carriers composing the through line according to the proportion which, by previous understanding or arrangement, each is entitled to receive. The initial carrier of each route is fully acquainted with the terms which each of the other carriers exacts for receiving, forwarding and delivering traffic.

The Western & Atlantic, and others, it may be assumed, have soliciting agents at Cincinnati. The various through lines are represented at important points of shipment, either by their agents or by railroad association officials, or by agents of friendly initial carriers from those points.

33. The following extracts from "Rules Governing the Transportation of Freight," issued by the Georgia Railroad Commission were put in evidence:

"RULE 6."

"*Regulations Concerning Freight Rates.*—The freight rates prescribed by the Commission are maximum rates, which shall not be transcended by the railroads. They may carry, however, at less than the prescribed rates, provided, that if they carry for less for one person, they shall for the like service carry for the same lessened rate for all persons except as mentioned hereafter; and if they adopt less freight rates from one station, they shall make a reduction of the same per cent at all stations, along the line of road, so as to make no unjust discrimination as against any person or locality."

"But when there are between any two points in this state two or more competing roads not under the same management or in the same system, then the longer line or lines, in order to give said points the benefit of competition, may reduce the rates between said two points below the standard tariff, without making a corresponding reduction at all stations along the lines of said roads: *Provided*, said reduction shall not make the rates less than the standard tariff rates for the shortest line between the two points. *Provided further*, that before taking effect, the proposed change of rates shall be submitted to and approved by the Commission."

By Circular No. 6 issued April 29, 1880, the Georgia Commission added the following language to "Rule 6."

"*Competing lines, not all within the jurisdiction of the Commission.*—But when from any point in this state there are competing lines, one or more, subject to the jurisdiction of the Commission, then any line or lines which are also subject may at such competing point make rates below the standard freight tariff, to meet such competition, without making a corresponding reduction along the line of road."

The following is an extract from a letter of the Commission dated June 3, 1880, to Virgil Powers, then General Commissioner of the Southern Railway & Steamship Association, now a member of the Georgia Railroad Commission, the complainant in these cases:

"Under the law, freights coming from or going beyond the boundary of the state are not within the jurisdiction of the Commissioners. A shipment from Rome to Charleston, passing over the Rome, Western & Atlantic, Georgia, and South Carolina Railroads, for example, could not in any way be regulated by the Commissioners. This *line* then is not subject to the jurisdiction of the Commission. It competes with *lines* to the sea, however, which are within the jurisdiction of the Commission. All such cases are intended to be covered by Rule 6 to the end that our own roads and seaports may be able to compete with roads and seaports without the state. Shipments *covered* by *note 1, over more than one road in this state*, being shipped from any point in this state to another point in the state, are held to be within the meaning of that note—the intention being to give the railroads the largest liberty in fostering the industries of the state—and each road in such *line* can lower rates on such articles without conflicting with Rule 6."

"Two or more roads in the state desirous of making joint rates between points on their respective roads may make such joint rates on articles not controlled by Note 1, by taking the rate allowed for an equal distance, if the points were on one road, and applying it to the different roads. For example:

First class—Marietta to Atlanta per 100 pounds	20 miles	20 cents
Atlanta to Macon, per 100 pounds	103 miles	48 cents
Macon to McRae, per 100 pounds	76 miles	39 cents
The sum of these locals for 199 miles would be		$1.07

But the rate for 199 miles, if on one road, would be per 100 pounds—first class—70 cents. Now a joint rate of $1.07 or of 70 cents for 100 pounds could be made or a rate between these amounts—the railroads making their own divisions of the total rates between themselves."

In regard to the denial of several of the defendants that they participate in the transportation of property between points mentioned in the complaints under a common control, management or arrangement, upon the facts stated in the findings we decide that the transportation of property between points of shipment and destination named in the complaints is conducted by the connecting defendant lines under a common arrangement for continuous carriage or shipment within the meaning of the first section of the Act to Regulate Commerce.

The receipt successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their

lines is assent to a common arrangement for such continuous carriage or shipment, and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.

Traffic is either state or interstate traffic according to its origin and destination. It is shipped by the consignor in the state where the consignee dwells, or it is not. If not, it is interstate traffic, and when carried over two or more lines, it is, by the fact of having been received, forwarded, and delivered as one through shipment, transported under a common control, management or arrangement, as the case may be, for continuous carriage or shipment.

The phrase "common control, management or arrangement for continuous carriage or shipment" in the first section was intended to cover all interstate traffic carried through over all rail, or part water and part rail lines. The "arrangement" for continuous carriage or shipment is complete whenever the carriers have arranged for delivering and receiving through traffic to and from each other and such an arrangement is necessarily "common."

This construction of the words "common arrangement" as used in the first section of the law is in line with our decisions in *Boston Fruit & Produce Exch.* v. *New York & N. E. R. Co.* 3 Inters. Com. Rep. 493, 4 I. C. C. Rep. 664, and *Mattingly* v. *Pennsylvania Co.* 2 Inters. Com. Rep. 806, 3 I. C. C. Rep. 592, and with other rulings of the Commission.

In several of these cases the through charge to intermediate stations is made by the addition of the terminal carrier's local rate to the through rate in effect to a point on its line. This practice has been disapproved of by the Commission in other cases. *Re Tariffs and Classifications of Atlanta & West Point R. Co.* 2 Inters. Com. Rep. 461, 3 I. C. C. Rep. 19; *Hamilton* v. *Chattanooga, Rome & Columbus R. Co.* 3 Inters. Com. Rep. 482, 4 I. C. C. Rep. 686.

The addition of a local rate to a reasonable through rate in order to fix the through charge to the local station is liable to produce a relatively unreasonable rate to that station. The difference in situation of the basing and local points in respect of through traffic is not properly measured by the local rate for carriage between them. The reasonableness of the added local, *as a local rate*, is not under consideration in a case where the rate complained of is the total charge over different lines. The total rate or charge for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate or charge is made is only material as bearing upon the legality of the aggregate charge, and how any reduction ordered may be accomplished, whether by lowering locals or proportions, is matter for the carriers to determine among themselves.

The rate over through connecting lines is correctly adjusted upon the distance through, and not upon the shorter distances over the several lines. *Coxe Bros.* v. *Lehigh Valley R. Co.* 3 Inters. Com. Rep. 460, 4 I. C. C. Rep. 535. Through and continuous lines imply through rates which must be reasonable rates. *Brady* v. *Pennsylvania R. Co.* 2 Inters. Com. Rep. 78, 2 I. C. C. Rep. 131.

Where two or more roads forming a continuous connecting line between points in different states bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the Act to Regulate Commerce by declaring that as to such traffic destined to such stations on such terminal road it is a local carrier. *James & Mayer Buggy Co.* v. *Cincinnati, N. O. & T. P. R. Co.*, 3 Inters. Com. Rep. 682, 4 I. C. C. Rep. 744.

As these cases all stand upon the charge of violation of the long and short haul clause, the fourth section of the statute, it becomes necessary to consider whether the defendants are justified in their conceded disregard of the prohibitive part of the provision. The point of the defense is that the transportation for shorter distances is under circumstances and conditions which are substantially dissimilar to those surrounding the transportation to the longer distance points; and this upon the assumption that they may in any case determine the question for themselves in the first instance.

The phrase "substantially similar circumstances and conditions" occurs in both the second and fourth sections of the Act to Regulate Commerce. An intelligent construction of this phrase involves the duty of ascertaining how it originated in the statute.

The words "under substantially similar circumstances" were in the discrimination clause of the original House Bill reported by the Commerce Committee of the House of Representatives in 1884. In the Reagan substitute bill the words did not appear, nor were they in the bill as it passed the House in January, 1885. The words "under similar circumstances" were used in connection with discriminations in the summary statement of causes of complaint against the railroad system contained in the Report of the Senate Select Committee presented in 1886; and the phrase "under substantially similar circumstances and conditions" was a part of the se-

ond section of the original Senate Bill which was introduced by Senator Cullom.

During the debate upon amendments proposed by Senator Camden and Senator Aldrich some discussion was being had in regard to the word "quantity." Senator Camden proposed that the words "of a like kind of property under substantially similar circumstances and conditions" be substituted for the amendments offered, and the substitute was adopted.

A short history of the framing of the fourth section is given in the opinion of the Commission, in *Re Petitions of the Louisville & Nashville R. Co.* 1 Inters. Com. Rep. 278, 1 I. C. C. Rep. 31.

The words "under similar circumstances" had been put into a short haul provision by the legislature of Connecticut before the interstate commerce law was enacted and that statute was referred to in the Congressional debates.

The words "under the same circumstances" are in section 90 of the English Act of 1845, and they and also the words "under like circumstances," have been frequently employed by the courts of England.

Whatever use may have been made in English decisons of the word "circumstances" or of the word "conditions" the value of these decisions as precedents to be followed in deciding cases in this country depends greatly upon the similarity of the statutory provision governing the English case to the provision of our law under which the case to be determined is brought. A comparison of certain clauses in English statutes with the second, third and fourth sections of the Act to Regulate Commerce is shown below:

EQUALITY CLAUSE.

English Act.

Sec. 90 Railway Clauses Act 1845.

"And whereas it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic but that such power of varying should not be used for the purpose of prejudicing or favoring particular parties or for the purpose of collusively or unfairly creating a monopoly, either in the hands of the company or of particular parties; it shall be lawful, therefore, for the company, subject to the provisions and limitations herein and in the special act contained from time to time to alter or vary the tolls by the special act authorized to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit; provided, that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton per mile, or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, *passing only over the same portion of the line of railway under the same circumstances;* and no reduction or advance in any such tolls shall be made either directly or indirectly in favor of or against any particular company or person traveling upon or using the railway.

UNJUST DISCRIMINATION CLAUSE.

American Act.

Sec. 2, Act to Regulate Commerce, 1887.

That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic *under substantially similar circumstances and conditions*, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

UNDUE PREFERENCE CLAUSE.

English Acts.

Sec. 2. Railway and Canal Traffic Act, 1854.

Sec. 11. Railway and Canal Traffic Act, 1873.

* * * and no such company shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. * * * *

UNDUE PREFERENCE CLAUSE.

American Act.

Sec. 3. Act to Regulate Commerce.

That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

THE 4TH SECTION OF THE ACT TO REGULATE COMMERCE.

"That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance; *Provided, however,* That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act."

At the time of the enactment of this section no similar provision was contained in any English statute. The Railway and Canal Traffic Act of 1888, after re-enacting the undue

preference clause of 1854, also provides in paragraph 3, section 27, as follows:

"The Court or the Commissioners shall have power to direct that no higher charge shall be made to any person for services in respect of merchandise carried over a less distance than is made to any other person for similar services in respect of the like description and quantity of merchandise carried over a greater distance on the same line of railway."

The difference between the English and American acts in respect to long and short hauls is that there the Commission or the Court is *empowered to prohibit* the greater charge for the shorter distance, while here the law itself prohibits the greater charge for the shorter distance when the circumstances and conditions surrounding the transportation are substantially similar, but *empowers the Commission to authorize* the less charge for longer distances.

In England a complaint of greater charge for the shorter haul is triable under the undue preference clause, which is nearly identical with a portion of section 3 of our law, and the English Commission or Court may prohibit such greater charge. But in the United States such a proceeding must be brought under the fourth section of the Act to Regulate Commerce.

In either country a complaint of undue preference or prejudice must (prior to the English Statute of 1888 which shifted the burden to the carrier) be supported by proof of damage which makes the preference or prejudice unreasonable or undue, but in cases brought under our fourth section or long and short haul clause, which particularly describes the act it declares to be unlawful, such proof is not required.

A case of undue or unreasonable preference or advantage or prejudice or disadvantage includes, as the terms themselves imply, consideration of all those circumstances and conditions which bear, not only upon the transportation by the carrier, but also often relate to the value and volume of the traffic, the favorable or unfavorable location of the places involved in the controversy, character of grades on different divisions, lateral lines, and other essential elements which enter more particularly into matters of relative services and relative rates.

This undue preference clause may justly be termed an omnibus provision, enacted first by Parliament and then by Congress to prohibit carriers from doing any act which unduly or unreasonably puts one shipper or description of traffic up in the scale of favor or puts another shipper or description of traffic down to his or its disadvantage or wrong. But when the Act to Regulate Commerce was passed Congress not only adopted that clause but saw fit to go further and specify that certain charges by the carrier would in themselves constitute wrong. The second and fourth sections of the Act—that is, the unjust discrimination and long and short haul clauses—are provisions of this character. Under these sections the carrier must not charge more for like service nor more for less service rendered in the transportation of a like kind of traffic under substantially similar circumstances and conditions. These provisions describe the offense and limit the circumstances and conditions to be considered to those under which the transportation is conducted. The undue preference clause of the English statute, which was copied into the third section of our law, contains no such description or limitation, nor do the words, "substantially similar circumstances and conditions," or any of them, appear therein.

Considerable variation in language is also found in comparing the English equality clause of 1845 with the second or unjust discrimination clause of our law. That the latter covers much more ground must be apparent to the casual observer, and if it were not for the fact that our second section contains the phrase "substantially similar circumstances and conditions" and the English equality clause in its proviso has the words "under the same circumstances" no reference or comparison would be deemed necessary.

The frequent citation of English decisions in cases affecting interstate transportation with manifest disregard of vast differences in facts, time, extent of country, methods of trade and transportation and great dissimilarity in statutory provisions, is ample warrant for the above somewhat extended comparison and for the following examination of some English cases which have been quoted for the purpose of influencing decisions in this country.

The case of *Attorney General* v. *Birmingham & Derby Junction R. Co.* (2 Ry. & Can. Cas. 124), was recently cited in a case brought under the second section of the Act to Regulate Commerce. The English case was decided in August, 1840. The American case was tried in 1890, fifty years later. The railway in the English case was operated under a special act which contained an equality clause similar to the proviso of section 90 of the English Act of 1845, above quoted. A passenger journeying to London over connecting railways was charged by the first railway for the carriage between two points on its line less than it charged to another passenger who only traveled between the two points on the first carrier's line, but the through charge to London was not less than the charge for the local or intermediate journey. The case was dismissed because prejudice to the latter class of passengers was not shown, and for the further reason that the higher rate charged was not in itself unreasonable. In that case the differ-

ence in destination made out the difference in circumstances which the special act required should be "the same." To charge less per mile for greater distances is a common rule of transportation and its legality is well settled.

The case in which the foregoing was cited related to charging a party of ten or more persons less *per capita* than was charged to single passengers, the journeys of the party and of the single passenger being between the same points, and in the same train; it was brought under a provision of our law which merely specified that the circumstances and conditions should be *substantially similar*, and not *the same*, and its phraseology is entirely different from that of the English Equality Clause of 1845. The fact that charges are not unreasonable *per se* does not prevent their being relatively unreasonable or constituting unjust discrimination under our second section by reason of being unequal. If the circumstances and conditions are substantially similar for like service, the discrimination is declared in the law to be unjust, but the English Statute required the circumstances to be the same.

The case of *Hozier* v. *Caledonian R. Co.* 1 Nev. & McN. 30, was also cited in the same case as showing that the parties must be shown to be competitors. So, also, in like manner were *Jones* v. *Eastern Counties R. Co.* 1 Nev. & McN. 45; *Painter* v. *London, B. & S. C. R. Co.* 3 C. B. N. S. 702, and *Infracombe T. C. Co.* v. *London S. W. R. Co.* W. N. 289, referred to. All these cases were tried with reference to undue preference or prejudice, which had to be shown to exist before the defendants could be held guilty of unlawful action. But in the case they were cited to influence no such showing was called for. Can it be said that the cases thus cited might not have been differently decided if tried under a provision of law like our second section, which not only forbids but defines the thing forbidden? The English statutes do not show any such definitive rule as is contained in the second and fourth sections of the Act to Regulate Commerce. Section 90 of the 1845 statute, in its proviso required equality when the carriage is over the *same portion of the line* under the same circumstances. Section 2 of our Act only requires the traffic to be like, the service to be like and contemporaneous, and the transportation under *substantially similar* circumstances and conditions. The provisions are so different in terms that the same set of facts might constitute immunity under the English provision and guilt under our law. Indeed, the Supreme Court of the United States tersely says of the English acts: "These traffic acts do not appear to be as comprehensive as our own and may justify contracts which, with us, would be obnoxious to the long and short haul clause of the Act, or would be open to the charge of unjust discrimination." *Interstate Commerce Commission* v. *Baltimore & O. R. Co.* 145 U. S. 263, 36 L. ed. 99. Take the case of *Hozier* v. *Caledonian R. Co.*, above mentioned. This was a long and short haul case. The decision was under the undue preference clause and to the effect that there must be competition of interest, or the complainant must show personal disadvantage, before he has title to complain, the fact that the complainant had frequent occasion to travel not being sufficient. Would this decision be possible under our fourth section?

The case of *Jones* v. *Eastern Counties R. Co.* 1 Nev.& McN. 45 is another passenger case where more was charged from one station than from another station situate a further distance on the same line. The rule was refused because *undue preference* was not shown. The mere suggestion of undue preference was held to be insufficient. Under the fourth section of the Act to Regulate Commerce, proof of the greater charge for the shorter distance would have been sufficient, for there was nothing whatever in the case upon which the defendant could base justification under our long and short haul clause. In a brief for defendants in these cases of the Georgia Railroad Commission this case of *Jones* v. *Eastern Counties R. Co.* is cited to show that through and local traffic constitutes such difference that the greater charge does not unduly prejudice the shorter distance points, and also that when active competition exists at the longer distance point it affords a good reason for making the lower charge. If our long and short haul clause did not exist and the case were brought under the undue preference provision the through and local traffic defense might possibly have some weight, but in the face of the mandate contained in the fourth section the claim of justification on the ground that one traffic is local and the other through is absurd. To allow such claim would be to defeat the object of the section. The rate on through traffic to the longer distance point may be proportionately less than the rate on local traffic to the intermediate point, but under the fourth section it cannot be less in the aggregate. As to competition, the position of the Commission has hitherto been well defined. Some competition does afford justification and some does not, and this matter we expect to treat extensively further on in this report. But the Jones case had in it no element of competition. Whatever was said there in relation to through and local traffic and competition was spoken by the judges at the trial. The decision was that the mere suggestion of preference because of the greater charge for the shorter distance was insufficient.

The same brief cites *Strick* v. *Swansea Canal Co.* 16 C. B. N. S. 245, decided in 1864. A pro-

viso in a canal act was similar to the proviso in section 90 of the 1845 statute. It was held competent for the company to carry at a lower rate for a particular individual in consideration of a large guaranteed minimum toll in order to enable them (the company) to enter into competition with a rival line of railway. We think other English decisions in similar cases have a different conclusion, but whether this is true or not it is too manifest for discussion that our second section would forbid the ruling here (*Providence Coal Co.* v. *Providence & W. R. Co.* 1 Inters. Com. Rep. 363, 1 I. C. C. Rep. 107), and moreover, that such a contract would in this country be held in contravention of the common law. *Hays* v. *Pennsylvania Co.* 12 Fed. Rep. 309.

In a case lately decided by the English Commission entitled *Liverpool Corn Trade Asso.* v. *London & N. W. R. Co.* L. R. 1 Q. B. Div. 120, 45 Am. & Eng. R. Cas. 216, the conflict of English decisions was commented upon as follows:

"The question had several times been mooted whether a rate so low as, when compared with another, to amount prima facie to an undue preference, could be justified on the ground that it was rendered necessary by the existence of competitive modes of carriage, whether by land or water. The state of the authorities upon the matter was far from satisfactory. The *dicta* in *Harris* v. *Cockermouth R. Co.* 3 C. B. (N. S.) 693, at p. 713; *per* Cockburn, *L. C. J.*, and in *Ransome* v. *Eastern Counties R. Co.* 4 C. B. (N. S.) 135, at p. 177, *per* Crowder, *J.*, are I think, very difficult to reconcile with the decision in *Budd* v. *London & N. W. R. Co.* 4 R. & C. T. Cas. 393, *n.*; 36 L. T. (N. S.) 802. The manner in which the question how far the necessities of competition will justify preferential charges was touched upon in *Garton* v. *Bristol & Exeter R. Co.* 6 C. B. N. S. 639, throws no additional light upon the subject. Budd's case, 4 R. & C. T. Cases, 393 *n.*, 36 L. T. (N. S.) 802, is open to the further observation (for which I am indebted to *Sir* F. Peel) that it is in conflict with the subsequent Scotch case of *Murray* v. *Glasgow & S. W. R. Co.* 4 R. & C. T. Cas. 456, 11 Court Sess. Cas. 4th Series, 205, in the court of session, and the case of *Denaby Main Colliery Co.* v. *Manchester, S. & L. R. Co.* 14 Q. B. Div. 209, 11 App. Cas. 97, 26 Am. & Eng. R. Cas. 93, in the English court of appeals, where it was laid down that an action will not lie to recover overcharges made in violation of the provisions of the Act of 1854, against undue preferences. When the Denaby Main case, 14 Q. B. Div. 209, 11 App. Cas. 97, 26 Am. & Eng. R. Cas. 93, was in the House of Lords the question was not decided, and the state of the authorities has been discussed by Cave, *J.*, in his judgment in *Lancashire & Y. R. Co.* v. *Greenwood*, 21 Q. B. Div. 215, 35 Am. & Eng. R. Cas. 537."

In a still more recent case decided in the English Court of Appeal, the above mentioned cases of *Harris* v. *Cockermouth*, *Denaby Main Colliery Co.*, *Ransome* v. *Eastern Counties R. Co.* and also *Eversheil's Case*, L. R. 3 App. Cas. 1029, were discussed; and the case of Budd was held to be no longer law.

The ruling on the main question presented by the appeal was that the railway commissioners or the court *may* take into consideration the existence of a competing route between the same points in considering a case of alleged undue preference.

Phipps v. *London & N. W. R. Co.* [1892] 1 Q. B. 229.

In that opinion *Lord* Herschell said of the Equality and Undue Preference clauses:

"Where there is a breach of the equality clause, no doubt you may sue to recover the difference on the basis that you can compel the railway company to pay you back anything which you have paid over what, for precisely the same service, they have charged to another. But under the Railway and Canal Traffic Act, as was pointed out in the House of Lords, the company have their option. They may put up one charge, they may put down the other. It is not an equality clause; it is only a clause relating to undue preference or advantage."

"The words of the equality clause have no elasticity at all; there are no outside circumstances to be taken into consideration, and it is not a question of regarding the position of the one trader as compared with the other, and then saying whether there is any undue preference. It is an absolute rigid equality which is demanded by the statute."

These words of the learned English judge clearly illustrate what we have said in relation to our own second and fourth sections as compared with the undue preference section which was copied from the English statute into our law.

It is unnecessary to continue this examination. In a case purely of alleged undue preference or prejudice the English cases have direct application. Even in cases under our second and fourth sections, English cases brought under the undue preference clause in which the decision has held undue preference to exist, have value as showing how strictly the English Commission or Court has applied the broad language of the clause to a particular set of facts, but when English decisions under the undue preference clause are cited by a carrier in justification of its action under the strict language of our second and fourth sections, the citations have greatly diminished force. These sections apply only against rates in specific cases, but the undue preference clause or third section is inclusive; it applies both to rates and facilities, and says generally to the carrier, you shall not in any manner un-

duly prefer one person or kind of traffic over another, and leaves it to the Commission or the Court to say when the undue preference is given. In the second and fourth sections what is unlawful is clearly defined, the circumstances and conditions of the transportation being similar in substance. We think, therefore, that while English cases are valuable as defining undue preference or prejudice their value is greatly limited in cases where the statute itself describes the offense it declares unlawful.

In regard to such elements of transportation as through and local traffic and cost of service we cannot do better than reiterate what was held by the Commission in *Re Louisville & Nashville R. Co.:*

"The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor, that the traffic which is subjected to such greater charge is way or local traffic, and that which is given the more favorable rates is not.

"Nor is it sufficient justification for such greater charge that the short-haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof."

Disproportionate expenses of carriage and great variation in the volume of traffic to various points are ever present in railroad service, were within the knowledge of Congress when the section was framed, and must of necessity have been considered as not constituting substantially dissimilar circumstances and conditions, in other than extraordinary cases, for under the contrary view it is manifest that in a large majority of cases the design of the section would be defeated. As above stated, a defense of the higher rate for the shorter haul which is based upon cost must amount to a practical demonstration that the short haul traffic is exceptionally expensive or the cost of the long haul transportation exceptionally low.

It is unnecessary to go over ground which was so carefully covered by the Commission in the Louisville & Nashville opinion, and we will at once proceed to the main question: What are the circumstances and conditions which a carrier may in the first instance take into account in fixing rates for longer and shorter distances over its line?

Under necessary and well settled rules of railroad transportation essentially different circumstances and conditions constantly arise. The section says, "The transportation of a like kind of property under substantially similar circumstances and conditions." A barrel of flour is a like kind of property with a carload of flour, but they are different units of quantity, and the transportation of a carload is not under substantially similar circumstances and conditions with those which apply to the shipment of a barrel, or, under present rules of transportation, any number of barrels less than a carload. Other examples would be one horse and a carload of horses, furniture knocked down or set up, small lots of grain in sacks or loose in carloads, and so on through the great variety of articles of commerce which seek carriage in different quantities and forms.

It is proper also to recognize the right of a carrier to charge different but duly published rates according as its liability is diminished by proper conditions stated upon the bill of lading accepted by the shipper or upon the ticket accepted by the passenger whereby the carrier, under such special contract, secures to itself some lawful pecuniary or economic advantage. These and other transportation methods not necessary or possible to specify constitute many kinds of essentially dissimilar circumstances and conditions arising upon its own line by which a carrier may rightfully be governed.

Circumstances and conditions affecting transportation also arise through competition with other carriers for business; that is, circumstances and conditions which do not wholly arise upon the carrier's own line.

The necessity for a construction of the fourth section of the Act became apparent almost immediately after the organization of the Commission. A large number of applications for relief were then filed by roads operating in all sections of the country. Investigations were held in many places and on June 7, 1887, the applications were disposed of in the opinion above quoted from, the Louisville & Nashville case, and it was intended that the construction there laid down should be sufficient for all cases based on similar grounds which might thereafter arise under the fourth section; but the construction put upon the statute at that time seems to have been misapprehended in some essential particulars by carriers.

The Commission held in that case that the phrase "under substantially similar circumstances and conditions" in the fourth section *is used in the same sense* as in the second section; and under the qualified form of prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for the shorter distance. The Commission said in regard to the employment of the same qualifying phrase in both sections 2 and

4: "It will be observed that the phrase is precisely the same; and there can be no doubt that the words were carefully chosen, probably because they were believed to express more accurately and precisely than would any others the exact thought which was in the legislative mind. And in this section (2) as well as in section 4, the phrase is employed to mark the limit of the carrier's privilege; its privilege, too, in respect to the very subject matter with which section 4, where it is employed, has to do, namely, the charges for transportation service."

In all cases under the second section the actual facts are of necessity entirely within the carrier's knowledge. The qualifying phrase, under substantially similar circumstances and conditions, used in the same sense in the second and fourth sections, has no greater force or different meaning in the one than in the other.

In reviewing what was held in the Louisville & Nashville case the precise wording of the statute must not be overlooked. The first part of the section forbids carriers to charge more for the shorter than for the longer haul when the transportation is under substantially similar circumstances and conditions. The other portion of the section, that which relates to a relieving order by the Commission, permits such an order only for the purpose of a lesser charge for the longer haul, but the discretion of the Commission is not limited, except that the case must be special—must present a question requiring authoritative action. The Commission said in that case that if the section had passed as it once stood without containing the qualifying phrase "under substantially similar circumstances and conditions" the Commission might have exercised its discretion in all cases where the circumstances and conditions appeared to be different, and it would have entered upon its duties "with a distinct understanding of the task imposed, even though its adequate performance might have been out of the question, but modified as it now stands the necessity for a relieving order is greatly narrowed, it being obvious that no order is needed to relieve against the operation of the statute when nothing is done or proposed which it makes unlawful."

But the Commission clearly foresaw at that time that a construction of the statute which would deliver even questions purely of fact unto the carrier's judgment in the first instance, must be accompanied by a statement of principles on which such judgment must be based or the greatest confusion and litigation would follow, and thereupon proceeded to lay down for the guidance of carriers rules which would not warrant them in making charges greater for shorter distances than those established for longer hauls.

The rules limiting the judgment of the carrier in respect to greater charges for shorter hauls were briefly stated as follows:

"Sixth: The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction the shorter being included in the longer distance it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic, and that which is given the more favorable rates is not.

"Nor is it sufficient justification for such greater charge that the short haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof.

"Nor that the lesser charge on the longer haul has for its motive the encouragement of manufacturers or some other branch of industry.

"Nor that it is designed to build up business or trade centers.

"Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up.

"The fact that long haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic."

The Commission might have stopped there and directed the carriers to withdraw their applications, leaving further construction of the section to come up in cases of complaint or subsequent application for relief. But before laying down any principles except the construction as to the carrier's right of primary determination it said:

"It is manifestly important to the public interest, as well as to that of the railroads themselves, that mistakes shall as far as possible be avoided. It is also important that the general rule laid down by the statute be strictly complied with whenever compliance appears to be fairly practicable, and that carriers direct their attention more to the feasibility of coming into conformity with it than to the possibility of finding reasons upon which to ground exceptions. They are therefore entitled to the benefit of such conclusions as we have already reached upon the general merits of their applications that they may be guided thereby in the preparation of their tariffs respectively. In giving these conclusions we limit ourselves strictly to the cases presented and leave out of view such other grounds of relief, if any, as are not yet formally brought forward."

The Commission then proceeded to discuss and lay down the rules above set forth. It being apparent that competition of various kinds would constitute a main subject for consideration in cases of long and short hauls the Commission discussed the force and effect of the competition of carriers not subject to the law, and also that of carriers subject to its provisions, for the purpose of arriving at such

general conclusions in regard thereto as would properly direct carriers in establishing rates for longer and shorter hauls.

The Commission said generally on the subject of competition as creating dissimilarity in circumstances and conditions that Congress in rejecting the fourth section as introduced in both of its branches, and insisted upon in the bill passed by the House, "understood that they were not adopting a measure of strict prohibition in respect to charging more for the shorter than for the longer distance, but that they were, instead, leaving the door open for exceptions in certain cases, and among others in cases where the circumstances and conditions of the traffic were affected by the element of competition, and where exceptions might be a necessity if the competition was to continue; and water competition was beyond doubt especially in view."

But the Commission immediately said in that connection that Congress must be supposed to have allowed this because the public interest required it, and "that only legitimate open and fair competition was meant, not everything that has been done under the name of competition and which in many cases has been equally destructive of public and private right. Among common abuses have been the granting of special favor in exceptional rates, rebates, drawbacks, etc., all of which are now expressly prohibited by law when they assume the form of unjust discrimination. There has also been favoritism between places and communities, as a result of competition; but this is no longer permissible." It was also expressly stated in the opinion that the prohibitions against unjust and unreasonable rates and unjust discriminations apply as well to cases under section 4 as in other cases.

In taking this view of the meaning of the statute the Commission undoubtedly relieved itself of many onerous duties in the consideration of cases arising on applications for orders granting leave to charge less for the longer distance on the score of competition; and the difficulty of discharging these duties was clearly set forth in the beginning of the opinion. By defining the kinds of competition which might entitle the carrier to make less charges for the longer distances and thereby justify consequent greater charges on its line for shorter hauls the Commission has recognized that competition of that character constitutes a state of facts of which the carriers could judge in the first instance without giving color of right to any charges on the competing line.

Now what kind of competition did the Commission hold might, by warranting a lesser long haul charge, justify carriers in establishing greater charges for shorter hauls? The answer is: Competition with water carriers. Competition with foreign railroads. Competition with railroad lines wholly in a single state. Such carriers are not subject to the law. They are independent of all regulation by the Federal authority, and consequently the carrier, subject to such regulation, in first determining for itself to charge less for the longer distance because of such competition, does not by meeting the competitive rates give color of right to rates on the other competing lines, for the law does not regulate such rates.

The Commission described one other kind of competition which might entitle a carrier to charge less for a longer haul and thereby justify short haul charges. This was in "rare and peculiar" cases of competition with a railroad subject to the Act where a strict application of the general rule of the statute would be destructive of legitimate competition. This class of cases was illustrated by two instances of very circuitous routes; one being where the competing lines run from the point of shipment, one in a direct line to the longer distance point while the other runs in the opposite direction and its traffic reaches the longer distance point by taking a wide circuit. This was the Pittsburgh or Youngstown case. The other illustration was that of roads running north and south delivering to connections at terminals or intermediate junctions, and competing to and from a common market with direct east and west roads which by reason of greatly less distance make the rates to the longer distance point.

The belief was indulged in that the carriers by strictly observing the limitations put upon their judgment in that opinion, and at the same time obeying the other provisions of the statute, would find little necessity for applying to the Commission for relief; that the operation of the law upon two carriers subject to its provisions would render competition between them an infrequent cause for seeking aid in an order relaxing the rule. But from the outset the Commission realized that the provision for relief in the fourth section would promote the interests of interstate commerce and uphold the rights of carriers by preserving competition between carriers subject to the Act which the Commission should ascertain to be legitimate. The opening part of the opinion under consideration states the view of construction which was thereinafter discussed and approved: That "the order for relief would be needful only when the case was not one of *plainly* dissimilar circumstances and conditions, but in which, nevertheless, there might be reasons and equities that would sanction such greater charge."

Further on the Commission said:

"The later clause in the same section which empowers the Commission to make orders for relief in its discretion does not in doing so re-

strict it to a finding of circumstances and conditions strictly dissimilar but seems intended to give a discretionary authority for *cases that could not well be indicated in advance by general designation*, while the cases which upon their facts should be acted upon (by the carriers) as *clearly exceptional* would be left for adjudication when the action of the carrier was challenged. The statute becomes on this construction practical and this section may be enforced without serious embarrassment."

It would be impossible to "indicate in advance by general designation" all cases of competition between carriers subject to the Act that should or should not come under the general rule. Competition between carriers subject to the Act does not constitute plainly dissimilar circumstances and conditions, for reasons which we shall now proceed to state, and the duty of primarily determining the question is laid upon the Commission by the fourth section of the statute.

The necessity for supplemental construction at this time arises from the fact that carriers in the operation of their lines have not held strictly to the principles laid down in the Louisville & Nashville opinion, under a possible misapprehension of the scope of that decision.

In stating in that opinion what kinds of competition might entitle the carrier to make lesser long-haul charges, or that create dissimilar circumstances and conditions under which it would be justified in charging more for shorter hauls, we now think, in the light of more than five years operation of the statute, that the Commission should not have included in such statement, "rare and peculiar cases of competition between railroads subject to the Act where a strict application of the general rule of the statute would be destructive of legitimate competition," if this language in the opinion was fairly susceptible of the interpretation which the carriers have put upon it. As an exception it was not consistent with the otherwise harmonious theory on which the whole opinion was based.

It constituted an exception to the clear reservation for the primary action of the Commission in cases involving competition between carriers subject to the Act which is implied in the fourth section. Because the instances of such "rare and peculiar" cases cited in the opinion are such as indicate a hardship that the Commission would not fail to recognize and by an order under the provisory clause relieve, if applied for, was no good ground for permitting the carriers to determine for themselves what cases of such competition are *rare and peculiar* or when any cases of strife for traffic between carriers subject to the law will, if the strict rule of the fourth section is applied, be "destructive of legitimate competition." From the fact that many carriers have, as was natural, expanded the permission restricted to "rare and peculiar cases" into a privilege to presume that whenever they engage in competition with other carriers subject to the Act the case becomes "rare and peculiar," the exceptional ruling has become inoperative, delusive, and opened the door to many evasions of the statute. We think there is nothing in the statute which warranted the exception.

The prohibitory part of the fourth section of the statute is followed by this proviso:

"That upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for transportation of passengers or property; and the Commission may from time to time prescribe the extent to which said designated common carrier may be relieved from the operation of this section of this Act."

Force must be given to this part of the section as well as the other.

In the framing of the fourth section it appears that a proviso of this character was made a part of it before the words "under substantially similar circumstances and conditions," were inserted in the preceding general rule. The debate indicates that the then object of the proviso was to give the Commission substantially discretionary power to relieve carriers from the operation of the general rule. The subsequent incorporation of the clause, "substantially similar circumstances and conditions" in the prohibitory part of the section, the same phrase being already in the second section, could only have been intended to provide for a class of cases where the carrier is capable of determining for itself whether the transportation conditions are similar, and this it can easily do when the competition is with carriers not subject to regulation under the Act. If it had been intended by that phrase to cover all cases of dissimilar circumstances and conditions apparent and actual, regardless of whether fairness and justice to carriers, shippers and localities demanded the exceptional charge, then the proviso would have been stricken out when the similarity clause was inserted. But the debates indicate that both the proviso and the clause were regarded as necessary, and that the proviso would apply to a class of cases not intended to be covered by the similarity clause.

In the absence of anything in the phraseology of the statute which clearly indicates to what class of cases these two provisions respectively apply, it becomes necessary to seek for an interpretation that is reasonable and will give effect to both clauses. A statute must, if possible, be so construed as to give effect to all its provisions.

The competition of carriers subject to the Act with carriers not amenable to its provisions plainly constitutes dissimilar circumstances

and conditions which justify a reasonable departure from the rule of the fourth section if the competition be actual and controlling in respect to traffic important in amount. This includes the competition of independent water lines, independent state railroads, and foreign railroads, where they have not so connected themselves with the carriage of interstate traffic as to thereby become subject to the Act.

Of the similarity or dissimilarity in the circumstances and conditions which originate in real and tangible competition with lines not subject to the Federal authority the carrier is obviously well qualified to judge and determine for itself in the first instance. Such circumstances and conditions have direct bearing upon traffic over the line and are not subject to qualification by a multitude of other facts pertaining to lines of other carriers subject to Federal regulation. For instance, the competition between rail carriers both subject to the Federal law for business between two points does not *because it exists* constitute circumstances and conditions of transportation which one carrier is competent to say will warrant exceptional rates on its road, even though the other may have the shorter line. Such a case presents questions that can only be properly determined by the regulating authority created by the law. Rates on the competing line may or may not be lawfully adjusted, and the low rates to the competitive point may be remunerative on the shorter line but unreasonably low and unprofitable over the longer line. This is a case for investigation by the Commission, not only with reference to the long line but it also involves a scrutiny of the rates of the competing road and the reasons which cause the low rates to be charged. Another consideration is that the carriers if left to themselves are likely to force the already low rate lower and lower, whether it originally paid both carriers or not, until finally a point is reached where other traffic on both lines is burdened with part of the cost which properly belongs to the business competed for; charges to many points on both lines are thrown out of just relation, and, what is still worse, the competition which has become illegitimate is likely to have so affected rates of roads not interested in the original strife, but which have felt obliged to give relatively lower rates to competitive points on their lines in the same territory, that they too stand in unlawful light. This is illustrated to a considerable extent in the territory now under consideration. Competition unrestrained will naturally develop into reckless warfare, or, through that combination which is the logical result of destructive or ruinous competition, perpetuate a system of rates which is burdensome to many communities while it unduly favors a few, and yet brings no additional returns to the carriers concerned. The law-making power never intended that competition should have such unrestrained and disastrous sway before the remedy of regulation should be invoked and applied.

But competition between carriers subject to the Act to Regulate Commerce *may* furnish grounds for disproportionate rates on the line of one of the carriers, and when such a railroad company meets a stronger competitor in the strife for business between the same points, such a case should, if the weaker line will gain some profit from the competitive rate, be brought to the attention of the Commission as a *special case* for relief under the proviso of the fourth section. The Commission will investigate the matter, and having in view the rights of both carriers and their duties to the persons and communities they serve, equitably determine the questions involved.

The regulation provided by the Act to Regulate Commerce is not intended to limit or restrict, but rather to preserve and encourage legitimate competition between carriers subject to its jurisdiction; but the legality of such competition should in no case be arbitrarily determined by the competitors themselves. Those who are subject to the law can never find excuse for disobedience in the disobedience of another and neither should be allowed to judge of what constitutes obedience on the part of another. Competition between carriers subject to the Act, to be legitimate, must be based upon actual compliance with the provisions of that law. When the competing carrier is not subject to the Act that fact alone may constitute a substantial dissimilarity in circumstances and conditions, because the rates of the competing carrier are not subject to regulation under the statute, so that there is no room for presumption or doubt in such a case.

In such a case it is easy to see that it was wise for Congress to allow the carrier to act independently of the regulating body in deviating from the general rule, but in a case where both carriers are subject to the statute there can be no presumption of the existence of facts that would warrant a departure from that rule, and the question whether they do exist or not must necessarily be a mixed question of fact and law depending on various considerations, as hereinbefore shown, which the regulating body must pass upon; and complicated as such a question is herein shown to be, it would be contrary to all analogy to allow one of the parties in interest to determine for itself. It would be a novelty in the drafting of statutes to charge a person who is made subject to the law with the solution of such difficult and intricate problems as must arise under the fourth section of this statute on the claim of a right, arising from competition with

another carrier also subject to that law, to disregard its general provision, and which Congress foresaw could only receive just solution by wholly disinterested minds. The protection of the law extends equally to carriers and the public, and no other interpretation of its provisions than that which awards even handed justice to both is admissible.

The line between the right of a carrier to conclude for itself in the first instance and the necessity of applying to the Commission for relief we think is sharply drawn at the point where the carrier is manifestly unable to rightfully decide.

We think that in no case is there any presumption of dissimilarity of circumstances and conditions where the competing lines are both subject to the Act, and there being no such presumption neither road can deviate from the general rule on its own motion, but must apply for relief under the proviso clause of the section, and the burden will rest upon the road seeking such relief.

Under that proviso there seems to be no limitation upon the power of the Commission to grant relief when, upon consideration of all the facts the Commission is satisfied "that the interests of the commerce of the country and common fairness to the common carriers require that an exception should be made."

It is difficult to see why this proviso is not broad enough to enable the Commission to relieve all cases of hardship under the fourth section arising from competition between carriers subject to the Act, including many of the embarrassments now felt by American carriers in competition with Canadian carriers which may be subject to the Act in respect to the traffic competed for.

The foregoing has been especially directed to the competition of carriers subject to the Act between the same points.

The same course should be taken when carriers meet the competition of other lines which carry traffic to the same point but from different points of origin. The strife for trade between different markets seeking transportation for like commodities to the same locality is undoubtedly one of the most potent commercial forces of our time. But a common carrier cannot rightfully assume that this or that market upon its line is entitled as a matter of right, in shipments to a given point, to rates which another carrier sees fit to give from a market on its line to the same point. It does not follow that markets competing for trade in the same territory must enjoy similar rates in order to compete with each other; and the carrier which serves one market has no right to assume that substantially equal rates must be given. Market competition does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the 4th section in charging more for a shorter than for a longer distance over their lines. To determine the force and effect of such competition involves commercial considerations peculiar to the business of shippers, such as advantage of business location, comparative economy of production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under which transportation by the carrier is conducted. Carriers cannot create abnormal situations by making rates which equalize advantages and disadvantages of competing localities and thereupon claim justification for greater charges on shorter hauls on the ground that the lesser long haul charges which accomplish such equalization are necessary to secure increase in traffic over their lines. Under the 4th section where doubt exists as to the existence of facts which would legitimately force a lower rate for the longer haul, and we think doubt must always exist where the competing carriers run from different markets, the carrier cannot assume to solve it. The propriety of applying to the Commission for relief in such a case is apparent.

To repeat the idea above discussed, the competition of carriers subject to the law between the points mutually served, or competition between different markets to the point where competing lines join, does not merely because it exists make out the dissimilar circumstances and conditions upon which a carrier may on its own motion base a lower rate for one point, while it keeps in effect a higher rate for a shorter distance over its line. They are not presumptively dissimilar. Investigation by the Commission may, with no wrong to the carrier, but with permanent benefit to the places they serve, result in bringing charges to all points in the immediate territory into closer conformity with the law, and render a lower rate for the longer distance unnecessary, or else furnish sound reasons for its being sanctioned. Regulation having been provided by Congress, its application is not only constant, but the machinery of the law is at all times available by the carriers governed, as well as by the public which the carriers serve.

The *special cases* referred to in the proviso of the fourth section, in which the Commission is empowered to make investigation and grant relief from the requirements of the general rule, include all cases that primarily involve questions of regulation over the respective competing lines. The line which forces the lower rate may itself be guilty of disproportionate rates. Such disparity may not be so great as to have caused a complaint to the Commission by the patrons of the line, notwithstanding the burdens imposed may be

manifest, but when rates so adjusted are made the basis of another line's departure from the rule of equitable charges, the situation imperatively calls for the intervention of the regulating authority, both in the interests of the connecting roads and of their patrons.

A construction of the law which allows a carrier to determine for itself in every instance whether the lower rate for the longer distance is warranted, is liable, when such lower rate is adopted by it, to cause another carrier serving the same territory to feel justified in establishing a lower rate for the longer distance on its line to the same point or to a different point appearing to require relatively favorable rates; and is also liable to cause other carriers in the same section to take similar action; thus creating an artificial or abnormal situation which constantly provokes belief and claim of unjust discrimination and endless controversies between shippers and carriers. Such a situation, left unchanged, presents a railroad problem most difficult of solution. But a construction of the law which will compel a carrier, before putting in a lower rate for the longer distance, to seek relief by a method which will involve a careful examination of the traffic conditions as to all the lines competing for carriage in the same territory, would tend to promote a solution more beneficial for all parties.

A concise statement of this construction of the fourth section on the point above discussed is: The carrier has a right to judge in the first instance whether it is justified in making the *greater charge for the shorter distance* under the fourth section in all cases where the circumstances and conditions arise *wholly upon its own line* or through competition for the same traffic with carriers not subject to regulation under the Act to Regulate Commerce. In other cases under the fourth section the circumstances and conditions are not presumptively dissimilar, and carriers must not charge *less for the longer distance* except upon the order of this Commission.

Aside from overruling the "rare and peculiar cases" exception, this construction is no departure from previous rulings and is not new. Soon after the Louisville & Nashville opinion was promulgated by the Commission. *Judge* Pardee of the United States Circuit Court approved this construction in *Missouri Pac. R. Co.* v. *Texas & P. R. Co.* 31 Fed. Rep. 327. Upon *ex parte* application of the receivers of the defendant for advice in relation to the construction of the fourth section of the Act to Regulate Commerce, the court held:

Under section 4 of the Interstate Commerce Law, relating to the charges for the long and short haul, it seems that where the circumstances and conditions are dissimilar there is no prohibition; where the circumstances and conditions are similar the prohibition attaches; and that where it is difficult to point out clearly the circumstances or conditions which produce dissimilarity, the doubt should go in favor of the object of the law, and the circumstances and conditions should be taken as substantially similar. Where the circumstances and conditions are similar, or substantially similar and the result to the carrier is injurious, relief can be had only through the commission.

Neither is our view in serious conflict with the opinion expressed by *Judge* Deady in *Ex parte Koehler*, 1 Inters. Com. Rep. 317. The *Ex parte Koehler* cases all involved water lines and the rulings were made with especial reference to the influence of competition by that mode of carriage; and the language of the judge in the course of discussion must be construed with like reference.

The case of the *Interstate Commerce Commission* v. *Atchison, T. & S. F. R. Co.*, 50 Fed. Rep. 295, was brought to enforce an order of the Commission issued against the defendants in a proceeding brought before it by the San Bernardino Board of Trade. In the case before the court the defendants took a great deal of additional evidence upon the subject of water transportation at the longer distance point. The court discussed the evidence at considerable length and held that such means of transportation actually exists, is actually and actively seeking the traffic, and that shipments by water are increasing. The decision turned upon this showing, and the language of the court in the course of the discussion must be held to have been made with reference to the facts therein set forth. The principle stated by the court that to render lawful a greater charge for a shorter than for a longer haul, under section four of the Act, it is not necessary to first obtain authority of the Commission; that such charge is lawful if the circumstances and conditions are not in fact substantially similar and the carrier may determine for himself, subject to a liability for violating the Act, if, on investigation, the fact be found against him, is clearly in line with our view as to competition by water lines, or the competition of foreign railroads, or the competition of independent state railroads. The decision was not rendered upon any controlling considerations of competition between carriers subject to the law.

In the case of *Osborne* v. *Chicago & N. W. R. Co.*, 48 Fed. Rep. 49, *Judge* Shiras in charging the jury, said:

"Whether the railway company was justified by a cut rate, making what was called in argument 'illegitimate competition,' and circumstances of that kind which grow out of the handling and management of the railroad business of the country, by other competing lines, and its effect upon the business of the defendant company, in the judgment of the court, is a question that cannot be submitted to you. Questions of that kind are for the

judgment and determination of the board of commissioners appointed under this Act, and the courts and juries, when they are called to act upon particular cases arising under this Act, where it is denied that the law has been violated, are only authorized to determine the question whether in the service rendered, the character of the property, its conveyance, and other facts which inhere in the carrying of freight upon the particular line which is charged with wrong doing, there existed dissimilar circumstances and conditions relieving this company from the charge of collecting a larger rate for the shorter haul over the same line, in the same direction, and under otherwise substantially similar circumstances and conditions."

This decision distinctly follows the construction that where doubt exists, the circumstances and conditions should be taken as substantially similar. Doubt always exists as to the legitimate force of the competition between carriers subject to the law which one of them claims to compel the making of exceptional charges over its line. The law restrains both alike and the true presumption is that they have equal advantage under the law. But if hardship is encountered then relief, temporary and continuing, may on proper showing be obtained under the proviso of the fourth section.

In a case where the competition of a state railroad which in no way made it subject to the Act, was alleged to justify the lower rate this Commission sustained the defendant and laid down the following principle:

"The words 'substantially similar circumstances and conditions' as found in the second and fourth sections of the Act to Regulate Commerce in certain important particulars define the rights and duties of carriers and the rights of shippers as well. For example, if the carrier claims to act under the compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him; or if the carrier claims to act under a compulsion of circumstances and conditions in the making of an exceptional rate which he could obviate by reasonably fair and just exertion on his part, then they will not avail him. But if the carrier is in good faith acting under a compulsion of circumstances and conditions beyond his control, not of his own connivance, and which he could not obviate by any reasonably fair and just effort on his part, and to avoid large loss adopts exceptional rates on a portion of his line, not unreasonable in themselves, and forced upon him by the action of an independent state railroad, *which is not subject to the Act to Regulate Commerce*, and which is operating a slightly shorter and competing line with his own, these are circumstances and conditions under the operation of the statute which justify him in adopting such exceptional rates thus forced upon him on this portion of his line." *Business Men's Asso.* v. *Chicago, St. P. M. & O. R. Co.* 2 Inters. Com. Rep. 41, 2 I. C. C. Rep. 52.

This ruling excludes the competition of carriers subject to the Act from the carriers' judgment.

The distinction herein made between the competition of carriers' subject to the Act, and the competition of such a carrier with those not subject to the Act, is also applicable to competition alleged in cases under the second and third sections, and the Commission so considered in *Harwell* v. *Columbus & W. R. Co.*, 1 Inters. Com. Rep. 631, 1 I. C. C. Rep. 237.

In a case where railroad competition was alleged by the respondent to justify the exceptionally lower rate, which came before the Commission for investigation in July, 1888, it appeared that the lower rate was caused by what the respondent termed unfair competition by the competing line, and the evidence tended strongly to show that the long haul rate was unreasonably low. *Re Chicago, St. P. & K. C. R. Co.* 2 Inters. Com. Rep. 137, 2 I. C. C. Rep. 231. In its annual report to Congress for that year the Commission said of its decision in that case:

"The reasoning seemed strong and was certainly plausible. But the question involved was a question of the construction of the Act, its answer was to be arrived at on consideration of what was probably the legislative intent. It was seen that the circumstances and conditions relied upon as entitling the carrier to make the exceptional rates were not circumstances growing out of natural causes; they were not the outcome of competition by water routes; there was no peculiarity of the line which would make the rates at the termini and at other stations relatively just; the only dissimilarity in the circumstances and conditions which attended the making of the rates at the different points was that at the termini there was sharp railroad competition and at the intermediate stations there was not.

"*But this was a state of things that, at the pleasure of the railroad companies acting generally, or even of single companies disposed to act in hostility, might be made to exist at any point of railroad connection in the country; and if the greater charge on the shorter haul was admissible in the case under investigation the rule of the fourth section would be of no practical value whatever. Any railroad company might by its action absolve a competitor from its obligation, and be itself absolved in return. The legislature never intended this consequence. It did not intend, as the Commission believed, that the carriers subject to the law should at pleasure thus make the rule of the statute ineffectual.*

"The carrier under investigation conformed to this conclusion and graded its rates accordingly, and the objectionable rates made by the carrier complained of were also soon discontinued."

It may not be out of place here to refer to late English construction of the law of undue preference contained in the Act of 1888 as applied to a case where competition with other railways between the same points and al

water transportation was relied upon to justify a lower charge for a longer distance, but the shorter was not included within the longer distance.

A clause in the statute relating to the public interest and interests of the railways is carefully construed. As to the public interest it was held that the fact that it is seldom not in the interest of the public to have a choice of competing routes does not decide the question. "*It is clear that the Act contemplates the possible existence of competition which may not be in the interests of the public although it be effectual to secure traffic.*"

After considering the words "public interests" the following rules are stated in the English opinion: "It is however, as a general rule, against the public interests that uncertainty should be introduced into trade by frequent or violent or *arbitrary* changes of the circumstances under which people engaged in business have to carry it on and to make their living. It is, as a broad general rule, *against the public interests that artificial circumstances*, which at the will or caprice or for the self interest of any man, or body of men, may be swept out of existence as lightly as they were perhaps created, *should be permitted to interfere with the natural course of trade. Liverpool Corn Trade Asso.* v. *London & N. W. R. Co.* L. R. 1 Q. B. Div. 120, 45 Am. & Eng. R. Cas. 216.

This English case clearly illustrates our construction of the law that the existence of competition between carriers subject to the Act does not justify them in the first instance in charging a lower rate for the longer distance. We do not think that case a proper one to cite as a precedent in a long and short haul case under our statute, for the circumstances of carriage are very different. It was purely a case of relative rates of undue preference between markets, but it shows how strictly the English authorities interpret the broad language of their law in accordance with the evident intent of the law-making power.

A proceeding known as the "Import Rate Case," and instituted by this Commission to enforce its order restraining carriers from charging less for services rendered in carrying import traffic from American seaports, when shipped from foreign ports under through bills, than they charge for carrying domestic shipments of like kind of traffic between the same points was decided in the United States Circuit Court, Southern District of New York, on October 5 of the present year. The long and short haul question was also to some extent involved. Wallace, *J.*, writing the opinion, which sustains the ruling of the Commission, in conclusion said:

"The Interstate Commerce Act would be emasculated in its remedial efficacy, if not practically nullified, if a carrier can justify a discrimination in rates merely upon the ground that unless it is given the traffic obtained by giving it would go to a competing carrier. A shipper having a choice between competing carriers would only have to refuse to send his goods by one of them unless given exceptional rates to justify that one in making the discrimination in his favor on the ground of the necessity of the situation."

We also refer to the decision of the Commission in the case of *James & Mayer Buggy Co.* v. *Cincinnati, N. O. & T. P. R. Co.* 3 Inters. Com. Rep. 682, 4 I. C. C. Rep. 744. In that case the defendants sought to justify the greater charge for the shorter haul on the ground of the competition of water carriers in connection with delivering rail lines from a different market. On this point the Commission held that:—

"Water competition to *justify* the greater charge for the shorter distance must be competition in transportation to the longer-distance point and as to freight which, if not carried over the line on which it is located, would reach such destination by water transportation."

The case was brought by complaint. There was no appearance at the hearing first assigned. The defendants subsequently, upon the order of the Commission that the burden was upon them took a little testimony by deposition, and the case was submitted with little or no argument on either side. The ruling and the order to cease and desist from charging more for the shorter than for the longer distance was in accordance with the spirit of the Commission's previous decisions and the only logical outcome of the case. The defendants attempted to justify the greater charge for the shorter distance on the ground of substantially dissimilar circumstances and conditions, but they were not plainly dissimilar, under the construction of the section as laid down by the Commission and approved by the courts. The competition relied upon to constitute the dissimilarity in circumstances and conditions was not only from a different point of shipment but it was the competition by carriers over through routes subject to the Act. What was said in that decision with reference to the competition of markets we now re-affirm. (686, 687). The competitors stood presumably with equal advantage under the law and the exceptional rate could only be sanctioned by an order granted upon investigation which should sustain the carrier's application for relief.

The language of the fourth section presents one very important consideration which should always be kept in view, namely: that which will not amount to a *justification* of the greater charge for the shorter haul under the prohibitory rule of the section may nevertheless *warrant* the Commission in granting a relieving order upon an application for relief under the proviso clause of the section. To stand

upon one's right under the law is one thing, and to obtain relief by process of law is another. Ordinarily the Commission should not alter the standing of parties in proceedings before it. When upon complaint under the 13th section of charges alleged unlawful under the rule of the fourth section, the carrier avers substantial dissimilarity in circumstances and conditions as justifying the greater charge for the shorter distance, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar. But upon an application under the fourth section proviso the carrier is the petitioner, not the respondent; it is not limited by the terms of the rule and may present to the consideration of the Commission every material reason for an order in its favor. And upon investigation of the matter the Commission is not confined to issues made by pleadings, but may, among other things, examine into the legality of rates on competing lines. The Commission may for cause shown on such an application institute on its own motion a collateral proceeding for the purpose of correcting apparently unlawful rates on the competing line, and pending the proceeding grant temporary relief to the petitioning carrier.

But it must not be inferred by this that the Commission will entertain applications for relief based on frivolous grounds. The petition or application must make out in statement a prima facie case of hardship under the rule, and when the competition of another carrier is the cause of an application to charge less for the longer distance, it must appear therein that traffic considerable in amount will be lost to the petitioning carrier if through action of the Commission its situation in regard to such longer distance rate shall not be relieved.

We must dispose of these cases under the above construction of the law. Taking up the cases in the order in which they are treated in the findings the Chattanooga-Atlanta all-rail route, Case No. 317, comes first. In this case where all the competing lines are subject to the Act to Regulate Commerce and the jurisdiction of this Commission as to through shipments from Cincinnati, New York, Philadelphia, Boston and Baltimore, or from any Ohio river or Mississippi river point or any Atlantic port north of Charleston, the defendants had no right to put in the higher rates for the shorter distance upon their own motion, but should have made application to the Commission for relief under the provisory clause of the fourth section, and are technically not now entitled to make defense to this complaint. But a considerable portion of the evidence was devoted to this route and we ought to give the parties the benefit of our comment and conclusions as the facts now stand.

A schedule of rates from Cincinnati to Atlanta which affords a rate per ton per mile varying on the different classes from 1.18 to 4.51 cents cannot be considered too low; on the contrary, if such a rate sheet were challenged it would take strong evidence to overcome the presumption that such rates per ton per mile are unreasonably high. But the unreasonableness of Atlanta rates is not questioned here, these rates being the lower charges for the longer distance with which rates complained of are compared. The distance from Cincinnati to Chattanooga is 336 miles, the first class rate is 76 cents and the rate per ton per mile is about 4½ cents. The distance from Cincinnati to Atlanta is 474 miles, the first class rate is $1.07 and the rate per ton per mile is also about 4½ cents. But the rate per ton per mile from Cincinnati to Marietta, a distance of only 451 miles, is over 5 cents and 6 mills. Marietta takes a first class rate of $1.37 from Cincinnati, being the Chattanooga 76 cent rate and the Western & Atlanta 51 cent local to Marietta. The rate per ton per mile Chattanooga to Marietta is over 8 cents and 7 mills for carrying about 117 miles, over one third the mileage Cincinnati to Chattanooga and nearly one fourth of the total distance from Cincinnati to Marietta. The per ton per mile rate to Marietta is for a fourth part of the carriage nearly double the rate per ton per mile for the other three fourths. There is 31 cents difference between the rates on first class traffic from Cincinnati to Chattanooga and from Cincinnati to Atlanta. On through business from Cincinnati 31 cents would seem to afford a sufficient margin for carrying between Chattanooga and any point on the Western & Atlantic Railroad.

Considering the relative amounts of through and local tonnage of the Western & Atlantic road, it is apparent that the reduction of rates to intermediate points to those in effect at Atlanta would result in but small loss of revenue from traffic shipped at present rates and this would very likely be more than made up by consequent increase in traffic to these points.

Carterville, Kingston and Marietta are reached by other lines than the Western and Atlantic but these lines make no competition with the Western & Atlantic in rates on traffic to these points.

In view of these facts and others shown in the statement of findings we hold that the defendants are not upon the evidence justified in making the greater charges complained of in this case. But this being the first case since the Louisville and Nashville decision in which the Commission has been called upon to specifically hold that relieving orders must be ap-

plied for in this class of cases, we think the carriers should have an opportunity in this case of applying for relief under the proviso of the 4th section, and, if possible, of bringing forward voluntarily as applicants, instead of defendants, additional evidence that may be admissible under such a proceeding, as indicated in this opinion. The order will therefore be that the defendants in this case cease and desist, within 20 days after receiving a copy thereof, from charging or receiving any greater compensation in the aggregate for the transportation of a like kind of property from Cincinnati or other points called and known as Ohio river points for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth or Marietta than for the longer distance over the same line in the same direction to Atlanta, the shorter being included within the longer distance, or, that the defendants, make and file with the Commission within the time above specified an application or applications as the case may require, as provided in the proviso of the fourth section of the Act to Regulate Commerce, for relief from the operation of that section in respect to the prohibition therein contained against charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from Cincinnati and other Ohio river points to the shorter distance points above mentioned than for such transportation over the same line in the same direction for the longer distance to Atlanta, and show cause within 60 days after service of the order why such application for relief should be granted; and upon such application the evidence already taken in this case may be used. In case the application for relief shall be denied the order to cease and desist shall stand, and compliance therewith will be required within twenty days after service of the order denying the application.

The next case is the Augusta-Atlanta part water route, case No. 314. Atlanta is the longer distance point in this case as in the case just decided, and the competing lines for through transportation from New York, Philadelphia, Boston, Baltimore, Cincinnati, etc., are also the same as in that case. This route is through Charleston and there is a competing route by the Ocean Steamship Company and Central Railroad of Georgia through Savannah and Macon to Atlanta; the distance being for all practical purposes about the same over either route. The transportation by the route through Savannah is composed of a water line and a line of railroad wholly in Georgia, but we shall not now undertake to discuss what effect an attempt of the water and state lines to make low individual rates and act independently of each other as to billing and shipment or carriage, might have upon traffic routed through Charleston. We are dealing with existing facts, and transportation over both routes is now through, and as to such transportation the carriers over both routes are subject to the Act. The East Tennessee and the Savannah, Florida & Western connecting at Jessup, Ga., also run from Savannah, Ga., through Macon, and the East Tennessee has its own line from Brunswick to Atlanta. High per ton per mile rates are produced by the locals of the Georgia Railroad and these rates, by being made part of through charges between interstate points, cause very considerable increase in rates per ton per mile for the whole route to intermediate points as compared with the rate per ton per mile produced by agreed through rates to the terminals. We are led to believe and hold upon the facts now before us that through charges over the route to the intermediate or shorter distance points are unlawful. For the reasons expressed in regard to the preceding case we shall direct the defendants to charge no more to the shorter distance points than to Atlanta, the longer distance station, or apply for relief and show cause thereon in the manner and within the time stated in the foregoing order in case No. 317. Before closing the discussion as to this case we desire to call attention to an admission by the defense in this case, namely, that Madison one of the shorter distance points would under the present method of defendants in fixing rates soon be likely to receive considerably reduced rates on account of the competition to that point through Macon situate on the Savannah route. A line extends from Macon up through Madison to Lula on the Richmond & Danville line. Madison and Social Circle both shorter distance points on the Georgia road are but 6 miles apart, and the present rates to Madison and Social Circle over this route are substantially the same. Social Circle is also connected with the Richmond & Danville road by a line to Gainesville. The apparently favorable situation of these two places in respect to transportation facilities is worthy of note.

The case numbered 325, and called the Atlanta & West Point all-rail route from Cincinnati and other Ohio river points is next in order. We do not think this case comes within the rule of the fourth section. It is conceded by the complaint and the fact appears in evidence that water competition exists to Montgomery by the Alabama river. Opelika the other longer distance point is benefited by rates lower than it would receive were it not for the influence of competition at Montgomery; and West Point is also favored thereby though in less degree. But the inherent defect in the complaint is that the transportation is not over *the same line* in *the same direction* to both the shorter and longer distance points.

The shorter is not included within the longer distance. Traffic for Montgomery and Opelika and even West Point routed by the Louisville & Nashville, one of the initial defendants, goes over a wholly different route, and as to the Cincinnati, New Orleans & Texas Pacific, another initial defendant, while the evidence is not clear upon the point, still the length of its line leads us to believe that in handling Cincinnati traffic for Montgomery and Opelika, it carries such traffic first to Birmingham and forwards to Montgomery and Opelika by connecting lines from that point. Freight from Ohio river points below Henderson may possibly go through Atlanta, but the principal point of shipment to which our attention was directed by the evidence is Cincinnati. The complaint in this case must be dismissed.

In Case No. 315, the Macon-Georgetown-Columbus Part Water Route, the lines are the Ocean Steamship Co. and the Central Railroad of Georgia, which transport the traffic from New York and other north Atlantic ports through the port of Savannah to Columbus, a longer distance point, and Everett, Butler, Geneva and Schatulga, shorter distance points on the same line, and also to Georgetown, a longer distance point, and Smithville, Dawson and Cuthbert, shorter distance points on the same line. These destination points are on the southwestern division of the Central system, beginning at Macon and ending by one branch at Columbus and by another at Georgetown or Eufaula on the opposite bank of the Chattahoochee river. Columbus is also on that river. The defense claims that water competition exists at Columbus and Georgetown, the latter being about a mile east of the river, by a route which is water New York to Jacksonville, rail from Jacksonville to Chattahoochee River Junction, and steamboat up that river to Columbus and Georgetown, but admits that under present rates the Chattahoochee competition is not an element to be feared. It is also in evidence that the channel of the Chattahoochee would need to be improved before it could be extensively employed for vessels of considerable draught; but how much improvement would be necessary was not shown. This route controls the rates to the points mentioned except as they may be influenced by the river line.

There is much less disparity in rates to the shorter and longer distance points upon this route than those in effect to such points on any of the other routes named in these complaints. The highest first class rate is $1.31 and the lowest is $1.14, making 17 cents difference between the first class rates to Columbus or to any shorter distance station. The rates to each point are straight rates and not the addition of rates to and from a basing point. It is apparent to us that an intelligent effort has been made to keep the disproportion in long and short haul rates down to a low degree, and upon a plan of making rates direct to the point of destination, and it is possible if not probable that the application of proper regulation to other lines in this territory may enable the carriers upon this route to strictly comply with the general rule, or at least further reduce the difference between charges for the longer and shorter distances.

But we are not assured by the evidence that water competition by the Chattahoochee river is a seriously threatening and potential factor in rate making at this time, or that if in effect it would not be over a route wholly or partially subject to our jurisdiction, and as competition with other lines subject to the Act is also in this case we think the proper and consistent course is found in the issuance of an alternative order like the one directed in cases 317 and 314, and such an order will be prepared.

The next case in order is the Atlanta-Macon all-rail route from Cincinnati. Here the Central of Georgia is again the terminal road. Macon is the longer distance point and Jonesboro, Hampton, Griffin, Barnesville and Forsyth are the shorter distance points. Macon and Atlanta, the two terminals of this the Atlanta division of the Central system, take substantially the same rates from Cincinnati. The rates to the intermediate stations are highest to the points about equi-distant between the terminals and rates on the higher classes are based on the terminal which gives the most favorable combination rate; but the lower class rates are as a rule not arrived at by adding established locals to basing point charges. The rate per ton per mile Cincinnati to Griffin, one of the shorter distance points, is 5¼ cents on the first class rate of $1.39, and the rate per ton per mile on the class D rate of 32 cents, the lowest class, is 1 cent and 2 mills. The Macon first class rate of $1.07 is about 3 cents and 6 mills per ton per mile and the class D rate of 29 cents is about 1 cent per ton per mile. We do not hesitate to say, as a general proposition that a rate per ton per mile of 5¼ cents on any class of goods for a distance of over 500 miles, as is in effect to Griffin, is apparently unreasonable; neither is a rate per ton per mile of 3 cents and 6 mills for nearly 600 miles, such as Macon has, apparently too low. We think the latter rate is in itself evidence of being profitable, and that the amount of the former leads directly towards a belief in its being extortionate. But rates generally in southeastern territory range higher than in other sections of the country, the evidence adduced at the hearing on the question of reasonableness was meagre, and we are no more prepared to say in this than in the other cases that the defendants are unable to rebut the presumption of unreasonableness which is raised by an examination of the rates alone. On this route from

Cincinnati to Atlanta the East Tennessee carries only between Chattanooga and Atlanta, but the East Tennessee runs on through Atlanta to and beyond Macon to the sea at Brunswick. It also connects at Jessup with the Savannah, Florida & Western for Savannah. The distance from Cincinnati to Macon by the East Tennessee route is 576 miles as compared with the distance by the route in this case of 591 miles, but the short route Cincinnati to Macon is formed by the Cincinnati, New Orleans & Texas Pacific to Chattanooga; the Western & Atlantic to Atlanta, and East Tennessee to Macon; distance 562 miles. The mileage *from* the sea to Macon is 192 miles by the Central of Georgia from Savannah, and about 200 miles by the Savannah & Western and East Tennessee from Savannah. The distance by the East Tennessee from Brunswick to Macon is about 190 miles. So that the mileage between Macon and the sea at the two ports named is about the same by either of the roads. The rates to Macon from New York or Baltimore, water and rail, and from Cincinnati, all rail, have but little variation. Macon rates all rail or water and rail appear to meet on a nearly common basis. The Atlanta rates have been herein referred to and commented upon in other cases. Traffic to both the shorter and longer distance points in this case is only carried over lines which are subject to regulation at our hands. We therefore direct that the like order be issued in this case as was directed to be entered in the Chattanooga-Atlanta case No. 317.

We next consider case number 326, the Atlanta & West Point, part water route through Charleston from New York and other northern ports to Newnan, Grantville, Hogansville, La Grange and West Point, shorter distance points, and Opelika, the longer distance point. All of these stations are located on the Atlanta & West Point road except Opelika which is upon the Western of Alabama line. As shown by the findings applicable to this route, water and rail lines through Savannah and Brunswick can reach all the shorter distance points through Opelika, the longer distance point, except Newnan, over a shorter rail mileage than by this route from Charleston. The water lines to Savannah and Brunswick do not touch at Charleston and the difference in distance by water from New York and other points to Charleston, Savannah or Brunswick is in view of the low cost of water carriage too inconsiderable to affect the merits of the case. The actual routing of the freight over these competing routes, which also reach Atlanta, and, one of them, Newnan, by direct lines from the seaboard, is not shown, they not being parties to the case. We assume that it would be for the advantage of the Central road taking freight from steamer at Savannah for West Point or even La Grange to route it through Opelika the longer distance point in this case, for its carrying distance would be longer than by delivering at Atlanta or Newnan. But traffic to the shorter and longer distance points does go over the route in this case, the Charleston route, and it is therefore within the rule of the fourth section and different from case 325 which we have dismissed. All the competing lines are subject to the provisions of the Act to Regulate Commerce and while under present rates of shorter lines to Opelika, West Point, &c., there may and doubtless do appear to the carriers composing the route under consideration reasons which they as carriers can but regard as forceful and controlling as to traffic and revenue, yet an application for relief by the carriers interested in present rates on traffic over this route, supported by such evidence and argument as the carriers' interest will lead them to present, and coupled with like investigation of the rates on the competing lines, may change the whole situation by bringing or retaining proper rates into effect and at the same time preserving all the just rights of each carrier and insuring equity and justice to the shippers and localities concerned. An alternative order as above outlined will likewise be entered in this case.

The Atlanta & West Point Fertilizer Route from Charleston, Case No. 324, is over the same railroads that form part of the last mentioned route from New York, to Newnan and other points. The fertilizer rates from Charleston are made in competition with rates from Savannah, and to the shorter distance points set forth in the complaint and findings the transportation from Savannah may be wholly within the State of Georgia. The rail lines from Savannah and Brunswick can also reach the shorter distance points through Opelika with fertilizers as they do with class freights mentioned under the Atlanta & West Point Part-Water Route. Fertilizers are low grade freight brought mostly, it is believed, in cheap bottoms to Atlantic ports. Rates on shipments of fertilizers from Savannah to Newnan, Grantsville, Hogansville, La Grange and West Point are exclusively subject to regulation by the complaining Georgia Commission, when the transportation is all in Georgia, and the Charleston dealer in fertilizers must meet the Savannah man by reducing prices if he cannot obtain from the Charleston route rates equally as low as those fixed by the Georgia Commission from Savannah. It seems to us that the remedy for the correction of rates on shorter hauls when competing rail shipments originate at seaports, one in and the other out of Georgia, is with the Commission of that State which is also the complainant herein. We might shut our eyes to this fact by holding that the competition is not from the same

point of departure, but considering the power and office of the complainant, we believe such a ruling would be founded more on sentiment than fact, and not be warranted by the slight evidence in this case.

This case does not fall because of the competition of the Savannah and Charleston fertilizer markets for trade at the destination points named in the complaint. If free market competition were the only factor in the case, we should decide adversely to the defendant's claim of justification. But the rates from Savannah to all the shorter distance points are not only not subject to investigation by this Commission, but are subject to the authority vested by the State of Georgia in the Railroad Commission of that State, the complainant in this case, and such complainant has, as shown in the 33d finding, made a general ruling, the stated intention of which is to give the railroads in Georgia "the largest liberty in fostering the industries of the State" in order "that our own roads and seaports may be able to compete with roads and seaports without the State." We have here the anomalous case of a State Board authorizing a carrier subject to its supervision to enter unrestrainedly into competition as to rates from a seaport in Georgia with interstate carriers from a neighboring seaport without the State of Georgia, and yet complaining against the interstate carriers that they violate the same long and short haul principle which it authorizes the state carriers to disregard. While the rule and explanation set forth in the 33d finding are kept in effect by the Georgia Railroad Commission, we do not think a complaint by it of rates from a southeastern seaport outside of Georgia to points in Georgia, reached also by rail lines from a seaport in that state, should be sustained.

Orders in the several cases will be made in accordance with the conclusions above stated. In this report and opinion all the Commissioners concur.

NOTE.—Since this opinion was written, the Osborne case, cited upon page 31, has been reviewed in the Circuit Court of Appeals, and the judgment of the court below was reversed, but there is nothing in the opinion of *Mr. Justice* Brewer which disapproves the principles laid down by *Judge* Shiras in his charge to the jury, so far as quoted in this opinion; nor was anything said in the opinion of the appellate court in the Osborne case, necessary to the decision therein, in conflict with any views above expressed.

71 EXHIBIT I.

72 At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 11th day of November, A. D. 1892.

Present: Hon. William R. Morrison, chairman; Hon. Wheelock G. Veazey, Hon. Martin A. Knapp, Hon. James W. McDill, Hon. Judson C. Clements, Commissioners.

L. N. TRAMMELL, ALLEN FORT, AND VIRGIL POWERS, constituting and composing the railroad commission of Georgia,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY, THE Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway and The Cincinnati Southern Railway Company. } No. 317.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved in this proceeding having been had, and the Commission having on the date hereof made and filed a report and opinion containing its findings of fact and conclusions thereon, said report and opinion is hereby referred to and made a part of this order; and the Commission having, as appears by said report and opinion, found and decided, among other things, that the defendants herein are not justified under the fourth section of the act to regulate commerce in charging or receiving more in the aggregate for the transportation of a like kind of property from Cincinnati and other Ohio River points for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, in the State of Georgia, than for the longer distance from Cincinnati and other Ohio River points, over the same line in the same direction, to Atlanta, in the State of Georgia,

It is ordered and adjudged, that the defendants, The Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railway Company, individually, and as lessee of and operating the Western and Atlantic Railroad, and the Cincinnati, New Orleans and Texas Pacific Railway Company, individually, or as lessee of and operating the Cincinnati Southern Railway, do wholly cease and desist, within twenty days after service of a copy of this order, from charging or

73 receiving any greater compensation in the aggregate for the transportation of a like kind of property from Cincinnati and other points, called and known as Ohio River points, for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, in the State of Georgia, than for the longer distance over the same line in the same direction to Atlanta, in the State of Georgia, the shorter being included within the longer distance; or, that said defendants do, within the time above specified, make and file with this Commission an application or applications, as may be required and as provided in the proviso clause of the fourth section of the act to regulate commerce, for relief

from the operation of that section in respect to the prohibition therein contained against charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from Cincinnati and other Ohio River points to the shorter distance points aforesaid than for such transportation over the same line in the same direction for the longer distance to Atlanta, aforesaid, and show cause within 60 days after service of a copy of this order why such application, or applications, for relief should be granted; and upon such application or applications the evidence already taken herein may be used. In case said defendants elect to apply for relief as hereby provided, and such application for relief, after investigation by the Commission, be denied, then the order to cease and desist as hereinabove set forth shall stand, and said defendants will be required to comply therewith within 20 days after service of the order denying said application.

It is further ordered that a notice embodying this order be forthwith sent to each of the defendants in this proceeding, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce.

OFFICE OF THE INTERSTATE COMMERCE COMMISSION,
Washington, D. C.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the foregoing exhibits, nine in number, and marked A to I, both inclusive, are correct copies of the originals thereof on file among the records of the Interstate Commerce Commission.

In testimony whereof I hereunto set my hand and affix the seal of the said Interstate Commerce Commission, at the city of Washington, in the District of Columbia, this 16th day of May, 1893.

[L. S.] EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

A true copy of the petition and exhibits.

EDW. A. MOSELEY,
Secretary of the Interstate Commerce Commission.

75 In the circuit court of the United States, northern district of Georgia, March term, 1893.

INTERSTATE COMMERCE COMMISSION
versus
THE WESTERN & ATLANTIC RAILROD COMPANY; THE Louisville & Nashville Railroad Company; the Nashville, Chattanooga & St. Louis Railway Company; the Cincinnati, New Orleans & Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway; the Cincinnati Southern Railway and S. M. Felton, receiver. } No. 524.

Petition under interstate commerce act. Order of notice to defendants. In equity.

These proceedings having been filed under an act to regulate commerce, approved February 4, 1887, as amended March 2, 1889, February 10, 1891, and February 11, 1893.

It is ordered and directed by the court that the defendant corporations appear before the United States circuit court for the northern district of Georgia, at the court room in Atlanta, Georgia, on the 10th day of July, 1893, at 10 o'clock a. m., to answer such proceedings and to show cause why the prayer of petition should not be granted; and it is further ordered that a copy of this order be served on the Western & Atlantic Railroad Company by serving Joseph E. Brown, president and receiver of said Western & Atlantic Railroad Company, and that the nonresident defendant corporations be served by the clerk of this court mailing a copy of this order in a registered letter, addressed to the president or chief officer at the principal office of such corporation set out in said petition and such corporations as are in the hands of a receiver, in the same manner, or service may be acknowledged by counsel representing said defendants; and it being represented to the court that copies of the petition or bill are printed and convenient (without holding the same to be necessary and proper notice under act above referred to), the clerk is directed to attach a copy of said petition or bill to each of said orders or notices and let them be served therewith.

In open court this June 19th, 1893.

WM. T. NEWMAN,
U. S. Judge.

76 *Service.*

I hereby certify that I have this 20 day of June, 1893, mailed a certified copy of this order and a copy of the petition in this case in registered letters addressed to each of the following persons, to wit: To the president or chief officer of the Louisville & Nashville Railroad Co., Louisville, Ky. To the president or chief officer of the Nash'l, Chatt. & St. Louis Ry. Co., Nashville, Tenn. To the president or chief officer of the Cin., N. O. & T. P. Ry. Co., Cincinnati, O. To the president or chief officer of the Cincinnati Railway Co., Cincinnati, O., and to S. M. Felton, receiver of Cin., N. O. & T. P. Ry. Co., Cincinnati, O.

O. C. FULLER,
Clerk U. S. Circuit Court.

Personally served a copy of the within writ on Joseph E. Brown, president and receiver of said Western & Atlantic Railroad Company, at Atlanta, Fulton Co., Georgia, on June 20, 1893.

A. E. BUCK, *U. S. M.*,
By O. E. MITCHELL, *Deputy.*

Personally served a copy of the within writ on Nashville, Chattanooga & St. Louis Ry. Company by personally serving a copy on L. L. McCollum, Supt., at Atlanta, Ga., on July 6th, 1893.

S. C. DUNLAP, *U. S. M.*,
By O. E. MITCHELL, *U. S. D. M.*

Filing: Filed in clerk's office 27 day of May, 1893. O. C. Fuller, clerk.

Order allowing defendants thirty days to answer.

In the circuit court of the United States, northern district of Georgia.

INTERSTATE COMMERCE COMMISSION
vs.
W. & A. RAILROAD COMPANY, LOUISVILLE & NASHVILLE R. R. Co., et al.
No. 524.

By consent of parties it is ordered, in the above stated case, that the defendants, and each of them therein named, be, and they are
77 hereby, allowed thirty days from this date to answer all proceedings in the above-stated case, with all of the rights of pleading to said petitions now enjoyed by said defendants.

It is further ordered that the judge of this court may, during vacation, by order direct the method in which testimony may be taken therein and appoint an examiner or other officer to take such testimony.

In open court this 10th day of July, 1893.

WM. T. NEWMAN,
U. S. Judge.

Filing: Filed in clerk's office 10 day of July, 1893. O. C. Fuller, clerk, by Geo. S. Barnard, deputy.

Answer of C., N. O. & T. P. Ry. Co.

In the circuit court of the United States, northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY, THE Louisville & Nashville Railroad Co., The Nashville, Chattanooga & St. Louis Railway Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, lessees of the Cincinnati Southern Railway Company, The Cincinnati Southern Railway Company, and S. M. Felton, receiver.

Answer of the Cincinnati, New Orleans & Texas Pacific Railway Company and of S. M. Felton, receiver thereof.

Now come the Cincinnati, New Orleans & Texas Pacific Railway Company and S. M. Felton, receiver thereof, and reserving unto themselves the benefit and advantage of exceptions to the many errors and insufficiencies in said petition contained, answer and say:

They admit that the Cincinnati, New Orleans & Texas Pacific Railway Company is and was at the time stated in petition a corporation under the laws of the State of Ohio, having its principal office at Cincinnati, in said State, and that the defendant, S. M. Felton, is receiver thereof by appointment of the circuit court of the United States for the southern district of Ohio, made March 18th, 1893, in case of Samuel Thomas vs. The Cincinnati, New Orleans & Texas Pacific Railway Company.

78 These defendants further admit that at the several times mentioned in the said petition the Cincinnati, New Orleans & Texas

Pacific Railway Company was a common carrier engaged in the transportation of persons and property, and that its road extends from Cincinnati, in the State of Ohio, to Chattanooga, in the State of Tennessee, a distance of 336 miles, said road being known as the Cincinnati Southern Railway, whereof said The Cincinnati, New Orleans & Texas Pacific Railway Company is lessee.

Defendants deny that they were or are engaged in the transportation of persons and property under any common control, management, or arrangement for continuous carriage or shipment with codefendants in this case or any of them.

Defendants admit that they receive and transport over said railway shipments of merchandise from points on the Cincinnati, New Orleans & Texas Pacific Railway destined to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta in the State of Georgia, at the rates named in said petition, but they deny that said transportation was under a common control, management, or arrangement with the codefendants.

These defendants admit that the defendants named in this case other than S. M. Felton, receiver, were on the 22nd day of October, 1891, impleaded in a controversy not requiring trial by jury as provided for in the seventh amendment to the Constitution of the United States, before the said Interstate Commerce Commission upon a petition of certain persons composing the railroad commission of Georgia, for an alleged violation of the act entitled an act to regulate commerce, and that Exhibit A attached to the petition here is a copy of the complaint then and there made.

These defendants further admit that on the 18th day of January, 1892, said The Cincinnati, New Orleans & Texas Pacific Railway Company filed its answer to the petition before the Interstate Commerce Commission and that Exhibit E attached to the petition herein is a true copy of said answer.

These defendants also admit that on the 11th day of November, 1892, said Interstate Commerce Commission made a report in writing in said cause, which included the finding and the facts upon which the conclusions of the Commission were based and that copy of the same is attached to the petition herein as Exhibit H.

They also admit that said Interstate Commerce Commission made an order and notice in relation to the matter and that a copy of the same is annexed to the petition herein, marked "Exhibit I."

These defendants further admit that a copy of said report and order and notice aforesaid were delivered to the defendants named
79 in said petition before the Interstate Commerce Commission.

These defendants deny that the report and findings of said Interstate Commerce Commission and its said order based thereon were lawful, and deny that there has been any violation of the act regulating commerce on the part of these defendants in the respects named in the petition herein or in the said petition before the Interstate Commerce Commission.

And these defendants deny each and every allegation of said petition not herein specifically denied or herein specifically admitted.

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, and S. M. FELTON, *Receiver*,
By EDWARD COLSTON, *Atty.*

STATE OF OHIO,
Hamilton County, ss:

Edward Colston, being by me first duly sworn, says that he is general counsel of the Cincinnati, New Orleans & Texas Pacific Railway Company, one of the defendants herein, and that the allegations of the foregoing answer are true as he verily believes.

EDWARD COLSTON.

Sworn to before me and subscribed in my presence this 7 day of July, 1893.

[SEAL N. P.] OSCAR STOEHR,
Notary Public, Hamilton County, Ohio.

Filing: Filed in clerk's office this 13th day of July, 1893. O. C. Fuller, clerk, by Geo. S. Barnard, deputy clerk.

Answer of W. & A. R. R. Co.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } Number 524, in equity.

80 The Western & Atlantic Railroad Company, one of the defendants in the above-stated case, reserving all rights to demurrer or objections to the foregoing petition, answering the same, saith:

That it is a corporation created, chartered, and having its principal office in the State of Georgia, as alleged in said petition.

Defendant denies that it was at the time of the acts specially mentioned or is now a common carrier under a common control, management, or arrangement for continuous carriage or shipment with defendants in this case or any of them, and calls for strict proof of same.

Defendant denies that is was or is now a party to any through rates from the city of Cincinnati, in the State of Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta, in the State of Georgia, under a common control, management, or arrangement with the codefendants.

This defendant admits that the defendants were on the 22nd day of October, 1891, impleaded in a controversy not requiring a trial by jury, as provided in the 7th amendment to the Constitution of the United States, before the said Interstate Commerce Commission upon the petition of the railroad commission of Georgia for an alleged violation of the act entitled "An act to regulate commerce," and the Exhibit A attached to the petition herein is a copy of the complaint then and there made.

This defendant further admits that on the 23rd day of November, 1891, it filed its answer to said petition, and that Exhibit D attached to the petition herein is a true copy of said answer.

Defendant also admits that on the 11th day of November, 1892, said Interstate Commerce Commission made a report in writing in said cause,

and that a copy of the same is attached to the petition herein marked "Exhibit H."

Defendant denies that at said hearing it was made to appear that the said defendants had violated the provisions of the act entitled "An act to regulate commerce," in any respect, but saith on the trial it was made to appear that said defendants had not violated the provisions of said act.

Defendant denies that said Commission duly and legally determined the matters and things in controversy and at issue between said parties, but on the contrary saith that the said Commission erroneously determined the matters and things in controversy and at issue between the said parties.

Defendant denies that the findings of facts made by the said Commission are correct, but saith that the said findings of fact made by the said Commission in the report alluded to are incorrect and unwarranted by the evidence produced before said Commission and by the facts of said case.

This defendant further answering, saith that the order Exhibit
81 I, referred to in said petition, is not based upon the evidence in said case and the law applicable to said evidence, but that the same is contrary both to the law and evidence, and should not have been made by said Commission.

This defendant denies that it has violated any provision of the Interstate Commerce Law, as stated in said report and order of the said Commission, but saith it has observed all of the provisions of the Interstate Commerce Law.

This defendant denies that the rates charged by it as specified in said Exhibit "A" to said petition are unreasonable or discriminative in their nature, but saith that the same are reasonable and do not discriminate and are not in violation directly or indirectly of section 4 of the act of Congress entitled An act to regulate commerce.

This defendant denies that the transportation of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta is made under similar circumstances and conditions with the transportation of like property to Atlanta, and calls for strict proof thereof and is ready to prove to the contrary.

This defendant denies that in any of the matters set forth or complained of in the said petition of the said Interstate Commerce Commission, or the exhibits thereto, that it has charged or received any greater compensation in the aggregate for the transportation of like kind of property and under substantially similar circumstances or conditions for a shorter than a longer distance over the same line in the same direction, the shorter being included within the longer distance as charged in said petition, and demands that strict proof be required of this charge and is ready to prove to the contrary.

And now having fully answered, defendant asks to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

THE WESTERN & ATLANTIC RAILROAD COMPANY,
By PAYNE & TYE, *Attys.*

STATE OF GEORGIA, *County of Fulton:*

Joseph M. Brown, being duly sworn, says that he is traffic manager of Western & Atlantic Railroad Company, one of the defendants in this

proceeding, and that the foregoing answer is true, as he thoroughly believes.

JOSEPH M. BROWN,
Traffic Manager Western & Atlantic R. R. Co.

Sworn to and subscribed before me this August third, 1893.

[Seal of N. P.] J. H. STERCHI, *N. P.*

Filing: Filed in clerk's office 9 day of Aug. 1893. O. C. Fuller, clerk, by Geo. S. Barnard, deputy clerk.

82 *Answer of the N., C. & St. L. Ry.*

The answer of the Nashville, Chattanooga & St. Louis Railway to the bill of complaint filed in the circuit court of the United States for the northern district of Georgia, it being No. 524 on the equity docket in the case of the Interstate Commerce Commission vs. The Western & Atlantic Railroad Company et al., to which it is made a defendant.

I. Respondent for answer says that it is the sole lessee of the Western & Atlantic Railroad Company, and is now operating the same.

Respondent supposes it to be true that the Louisville & Nashville Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Kentucky, having its principal office at Louisville, in the State of Kentucky.

Respondent admits that it (respondent) is a corporation created, chartered, and existing under and by virtue of the laws of the State of Tennessee, and that it has its principal office at Nashville, in the State of Tennessee. It has never been incorporated in Georgia, Alabama, or Kentucky.

Respondent supposes it to be true that the Cincinnati, New Orleans and Texas and Pacific Railway is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, having its principal office at Cincinnati, in said State of Ohio, and that the defendant, S. M. Felton, is the receiver thereof.

Respondent supposes it to be true that the Cincinnati Southern Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, having its principal office at Cincinnati, in said State of Ohio.

Respondent admits that the defendants named in the petition filed in this case were on the 16th day of October, 1891, and still are common carriers engaged in the transportation of persons and property through several of the States of the Union, and principally were they engaged in the said business from the city of Cincinnati, in the State of Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Ackworth, Marietta, and Atlanta, in the State of Georgia.

Respondent denies that there was on the 16th or 22nd day of October, 1891, or is now, any common control, management, or arrangement between this respondent and any of its codefendants for the continuous carriage or shipment by its or their railroads. As to whether any such common control, management, or arrangement existed between any of the other defendants to the petition, respondent has no knowledge, information, of belief.

83 II. Respondent admits that on or about the 22nd day of October, 1891, L. N. Trammell, Allen Fort, and Virgil Powers, purporting to constitute and compose the Railroad Commission of Georgia, filed a petition before the Interstate Commerce for an alleged violation on the part of said defendants of the provisions of the act to regulate commerce, and that Exhibit "A" to the petition filed in this case is a true copy of said petition; and respondent admits that a true copy of said petition was forwarded to respondent; and respondent supposes it to be true that copies of said petition were forwarded to each of the other defendants herein named. As to whether, however, said commissioners named above were duly qualified and constituted the Railroad Commission of Georgia, this respondent has no knowledge.

III. Respondent supposes it to be true that Exhibits B, C, D, E, F, and G to the petition filed in this case are true copies of the answers of the respective defendants, as alleged in the petition filed in the case.

IV. Respondent admits that it appeared before the Interstate Commerce Commission at Atlanta, Georgia, on the 24th day of March, 1892, and that some of its codefendants also appeared; but whether all of the defendants who are stated in the petition filed in this case as having appeared on that occasion did appear, respondent has no knowledge, information, or belief, nor has it any knowledge or information as to whether said other defendants had any notice that there would be any hearing of the controversy at Atlanta as aforesaid on that day.

V. Respondent denies that it was made to appear to the satisfaction of said Commission at said alleged hearing, or at any other time, that this respondent had violated any of the provisions of the act to regulate commerce in any respect whatever, either as alleged in the original petition or otherwise.

Respondent further denies that it has violated any of the provisions of said act, as it will prove at the hearing of this case.

Respondent denies that said Commission duly or legally determined the matters or things that were in controversy or at issue between said parties; on the contrary, respondent is advised, and so insists, that such determination of said matters and things as was made by said Commission was illegal.

Respondent admits that said Commission made a report in writing in respect to said matters and things, and that Exhibit "H" to the petition filed in this case is a true copy of said report; which report
84 included the finding of facts upon which the conclusion of said Commission is based, but denies said report or finding of facts were warranted by the facts of the case.

Respondent denies that said Commission duly formulated any order or notice in relation to the matters or things stated or charged in said original petition.

Respondent denies that such order or notice as was made or issued by said Commission with respect to said matters or things was in accordance with or agreeable to the requirements of the statutes in such cases made and provided.

Respondent denies that said order now remains in full force or effect, or that it was ever in force or effect.

Respondent supposes it to be true that said order has never been

vacated, set aside, modified, or changed in any respect whatever, and it admits that Exhibit "I" to the petition filed in this case is a true copy of said order; but respondent is advised and insists that said order and said notice are illegal and not authorized by the act to regulate commerce.

Respondent admits that said Commission caused a properly authenticated copy of its said report, together with said order and notice aforesaid, to be delivered to respondent.

VI. Respondent denies that it has ever violated any of the provisions of the act to regulate commerce.

Respondent denies that it has at any time been unmindful of its duty, or of any lawful decision or determination of said Commission; or that it has ever disregarded or set at naught any lawful order or authority of said Commission; or that it has ever wilfully or knowingly or at all violated or disobeyed any lawful order of said Commission.

VII. Respondent admits that it is true that the rates of freight charged, collected, and received by respondent, the Nashville, Chattanooga & St. Louis Railway, the Louisville & Nashville Railroad, and the Western & Atlantic Railroad Company, for freight transported by continuous carriage from the city of Cincinnati and other Ohio River points to the stations mentioned in the petition are higher and greater on each class mentioned in the petition than the amount charged and received on freight to Atlanta, Ga., which is a greater distance from the city of Cincinnati and other Ohio River points, notwithstanding the fact that there is no direct water competition in the city of Atlanta, but there is railway competition at Atlanta from other lines, which is just as effective as water competition, and some of those lines are not subject to the control of the Interstate Commerce Commission.

85 VIII. Respondent denies, however, that the rates of freight in which this respondent participates as aforesaid are unreasonable and discriminating in their nature. On the contrary, respondent avers that they are fair, reasonable, and equal and open to every one, and that they do not unjustly discriminate against any person or place.

IX. Respondent denies that the transportation of property from said Ohio River points to Atlanta, Georgia, is or has been conducted under substantially similar circumstances and conditions as the transportation of like property from said Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta. On the contrary, respondent avers that the transportation of like kind of freight between said Ohio River points and Atlanta is done under entirely different circumstances and conditions from those affecting the transportation from said Ohio River points to the stations mentioned in the petition.

X. Respondent further shows unto your honor that from Cincinnati and the other Ohio River points to Atlanta, Ga., there are various all rail lines, and part rail and a part water line.

Business from Cincinnati, Louisville, Evansville, Cairo, and other Ohio River points, to stations on the Western & Atlantic Railroad might move through Birmingham and Atlanta. From Evansville, Paducah, Cairo, and Memphis it does.

In such cases Calhoun and the stations on the W. & A. R. R. are not intermediate points with Atlanta.

The Western & Atlantic Railroad does not unite in any joint arrange-

ment for making through rates, or for dividing by established per cents, in business coming over this line. It maintains the same position with reference to its Atlanta connections as it does with its Chattanooga connections, namely, demanding its full local tariff rates on all such traffic from either Atlanta or Chattanooga to any local station on its line.

While there is a "line," therefore, within the meaning of the decision in the Social Circle case, from Cincinnati, Louisville, et al., to Atlanta through Chattanooga, there is no such "line" from the same places to Calhoun and other local points on the Western & Atlantic Railroad.

XI. Respondent further desires to call attention to the so-called fact, as reported by the Interstate Commerce Commission, to the effect that the net income of the Western & Atlantic Railroad for the year 1890 was $237,329.71. As a natural fact the net earnings for that year were only $198,000.00, and even this large showing is due to the fact
86 that the lessees allowed the tracks, bridges, and equipments to run down. Had the proper repairs and improvements been made, there would have been no net earnings above the rental, but more probably a deficit. This respondent was compelled to expend over $600,000.00 in placing said road in a safe condition when it took charge of it in 1891.

XII. Respondent further avers that the rates actually charged by it and its connecting lines from said Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta are just and reasonable in themselves, and that the rates to Atlanta, Ga., in view of the fact of the active competition at that point, are also just and equitable in themselves, and that said rates to Atlanta do not constitute any unjust discrimination or undue preference in favor of Atlanta as against Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Ga.

Having fully answered, respondent prays to be dismissed with reasonable costs.

[SEAL OF N. C. & ST. L. RY.]

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,
By J. W. THOMAS, *President.*
O. H. AMBROSE, *Sec'y.*

STATE OF TENNESSEE, *Davidson County:*

Personally appeared before me, Charles E. Curry, a notary public duly appointed and qualified in and for said county and State aforesaid, J. W. Thomas, president of the Nashville, Chattanooga & St. Louis Railway, the above-named respondent, and signed the aforesaid answer, and affixed the seal of the said corporation thereto as the answer of said corporation, and swears that the facts contained therein are true to the best of his knowledge, information, and belief.

In witness whereof I have hereunto signed my name and affixed my notarial seal at office at Nashville, Tennessee, this the 7th day of August, 1893.

[SEAL OF N. P.]

CHARLES E. CURRY,
Notary Public.
J. D. B. DUBOW, *Att'y.*

Filing: Filed in clerk's office 9 day of Aug., 1893. O. C. Fuller, clerk, by Geo. S. Barnard, deputy clerk.

Answer of the L. & N. R. R. Co.

The answer of the Louisville & Nashville Railroad Company
87 to the petition filed by the Interstate Commerce Commission against The Western & Atlantic Railroad Company, this respondent, The Nashville, Chattanooga & St. Louis Railway Company, the Cincinnati, New Orleans & Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway, the Cincinnati Southern Railway Company, and S. M. Felton, receiver, in the circuit court of the United States for the northern district of Georgia, in equity No. 524 on the rule docket of said court.

I. Respondent admits that the Western & Atlantic Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Georgia, and that it has its principal office at Atlanta, in said State; that the Louisville and Nashville Railroad Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Kentucky, and that it has its principal office at Louisville, in said State; that the Nashville, Chattanooga & St. Louis Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the States of Tennessee, Alabama, Georgia, and Kentucky, and that it has its principal office at Nashville, in the State of Tennessee; that the Cincinnati, New Orleans & Texas Pacific Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, and that it has its principal office at Cincinnati, in said State; and that the defendant, S. M. Felton, is the receiver thereof; that the Cincinnati . . . . . Southern Railway Company is a corporation created, chartered, and existing under and by virtue of the laws of the State of Ohio, and that it has its principal office at Cincinnati, in said State.

II. Respondent admits that the defendants were on October 16th, 1891, and still are, respectively, common carriers, engaged in the transportation of persons and property by railroad over their respective roads, which roads extend through several of the United States; that they were on October 16th, 1891, and now are engaged in such business over their respective roads from the city of Cincinnati, in the State of Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta, in the State of Georgia.

III. The Louisville and Nashville Railroad Company owns a bare majority of the capital stock of the Nashville, Chattanooga & St. Louis Railway Company, and the Nashville, Chattanooga & St. Louis Railway Company leases from the State of Georgia and operates the Western & Atlantic Railroad; but the Louisville & Nashville Railroad Company does not operate or control the operation of either the Nashville, Chattanooga & St. Louis Railway or the Western & Atlantic Railroad; nor
is the Louisville and Nashville Railroad Company under any
88 common control or management with the Nashville, Chattanooga & St. Louis Railway Company, each of said companies being controlled, operated, and managed by separate and distinct officers, agents, and servants. Neither is respondent under any common control, management, or arrangement with any of the defendants for a continuous

carriage or shipment of persons or property, except that the Louisville & Nashville Railroad Company receives shipment of freight at Cincinnati destined to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta, Georgia, for which it issues its own true bills of lading, which bills of lading are protected by the Nashville, Chattanooga & St. Louis Railway Co. individually and as lessee of the Western & Atlantic Railroad. When said shipments are made through from Cincinnati to Atlanta they are carried at certain agreed through rates, and certain proportions of said through rates are accepted by the Nashville, Chattanooga & St. Louis Railway Company individually as its compensation for carrying such shipments from Nashville to Chattanooga; and certain other proportions of said through rates are accepted by said company as lessee of said Western & Atlantic Railroad as its compensation for carrying such shipments from Chattanooga to Atlanta. But the Nashville, Chattanooga & St. Louis Railway Company, as lessee of the Western and Atlantic Railroad, has at all times declined to form through routes or to make through rates to or from the local stations of the Western & Atlantic Railroad.

IV. Respondent denies that the defendants were duly impleaded in any kind of a controversy before the Interstate Commerce Commission on October 22nd, 1891, though it is true that on or about October 16th, 1891, L. N. Trammell, Allen Fort, and Virgil Powers, constituting and composing the railroad commission of Georgia, filed a petition before the Interstate Commerce Commission, a correct copy of which petition is filed as Exhibit "A" to the petition filed in this case. Whether said railroad commission of the State of Georgia has been duly or legally created by the laws of the State of Georgia, and as to what are the duties of said commission under the laws of said State, respondent prefers that said laws shall speak for themselves.

V. Respondent admits that a copy of said petition, duly attested by the secretary of said Interstate Commerce Commission, under the seal of said Commission, was duly forwarded by said Commission to respondent; and it supposes that similar copies were duly forwarded to each of the other defendants.

VI. Respondent admits that on or about the 9th day of November,
89 1891, respondent filed its answer to said petition before said Commission, and that Exhibit "B" to the petition filed in this case is a correct copy of said answer.

VII. Respondent admits that on or about the 16th day of November, 1891, the Nashville, Chattanooga & St. Louis Railway Company, in its own name, and as sole lessee of the Western & Atlantic Railroad, filed its answer to said petition before said Commission; and that Exhibit "C" to the petition filed in this case is a correct copy of said answer.

VIII. Respondent admits that on or about the 23rd day of November, 1891, the Western & Atlantic Railroad Company filed its answer to said petition before said Commission; and that Exhibit "D" to the petition filed in this case is a correct copy of said answer.

IX. Respondent admits that on or about the 18th day of January, 1892, the Cincinnati, New Orleans & Texas Pacific Railway Company filed its answer to said petition before said Commission; and that Exhibit "E" to the petition filed in this case is a correct copy of said answer.

X. Respondent admits that the matters complained of in said petition filed by L. N. Trammell, Allen Fort, and Virgil Powers, constituting the railroad commission of the State of Georgia, came on to be heard before said Interstate Commerce Commission at a special session thereof, held at Atlanta, Georgia, on or about the 24th day of March, 1892, whereof respondent had due and sufficient notice; and respondent supposes that the other defendants also had due and sufficient notice of said hearing.

XI. Respondent denies that it was made to appear that respondent had in any respect violated any of the provisions of the act to regulate commerce. Respondent denies that said Interstate Commerce Commission duly or legally determined the matters or things in controversy between said parties. Respondent admits that said Commission on or about the 11th day of November, 1892, made a report in writing in respect thereof; and that Exhibit "H" to the petition filed in this case is a correct copy of said report. Respondent admits that said report included certain alleged findings of fact, upon which certain alleged conclusions of said Commission were based.

XII. Respondent admits that said Commission formulated an order and notice in relation to the matters and things stated and charged in said petition filed before said Commissioners; but respondent denies that said order and notice was duly made or that it was made agreeably to the requirements of the statute in such cases made and provided, or that it now remains in force or effect, though respondent admits that said order and notice has never been vacated or set aside, altered, modified, or changed in any respect by said Commission; and it admits that
90 Exhibit "I" to the petition filed in this case is a correct copy of said order and notice.

XIII. Respondent admits that *that* it was furnished with a properly authenticated copy of said report and order and notice on or about the 11th day of November, 1892; and respondent supposes that the other defendants were also furnished with properly authenticated copies of said report and order and notice.

XIV. Respondent denies that it has been unmindful of its duty or of any lawful decision or determination of said Commission, or that it has through its officers, servants, or attorneys, or otherwise, disregarded or set at naught the lawful authority of said Commission; or that it has wilfully or knowingly, or at all, violated or disobeyed any lawful order or notice of said Commission, or that it has neglected or refused to comply with any lawful order of said Commission, at Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, in the State of Georgia, or elsewhere. Respondent admits that it has not applied to said Commission for relief from the operation of the fourth section of the act to regulate commerce; and the reason that no such application has been made is that it has never done or proposed to do anything which required relief from the operation of that section.

XV. Respondent is advised and insists that the order and notice made and issued by the Interstate Commerce Commission in this case is unlawful and void, for the following among other reasons:

The transportation of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and

Marietta, in the State of Georgia, is not conducted under substantially similar circumstances and conditions with transportations of property from Cincinnati and other Ohio River points to Atlanta, Georgia.

Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta are local stations on the line of the Western & Atlantic Railroad. There is no navigable water course at any of said places. There is no other railroad at any of said places except at Kingston, Cartersville, and Marietta. There is no competition by either rail or water existing at either of said places. There are various competing lines of transportation running from Cincinnati and other Ohio points to Atlanta, and the rates from Cincinnati and other Ohio River points to Atlanta are fixed by that competition.

The Louisville and Nashville Railroad from Cincinnati to Nashville, the Nashville, Chattanooga & St. Louis Railway from Nashville to Chattanooga, and the Western & Atlantic Railroad from Chattanooga to Atlanta, forms one of said lines, and it is impossible for that line
91 to obtain higher rates from Cincinnati and other Ohio River points to Atlanta than are charged by its numerous and powerful competitors.

There are also various other competing lines of transportation running to Atlanta from Cairo, Memphis, Greenville, Vicksburg, New Orleans, Mobile, and other Mississippi River and Gulf points. There are also various competing lines of transportation running to Atlanta from Boston, New York, Philadelphia, Baltimore, and other North Atlantic ports. The competition by all of such lines consists in the carriage by those lines to Atlanta of products similar to the products carried there by the lines running from Cincinnati and other Ohio River points. The lines from Cincinnati and other Ohio River points to Atlanta are forced to accept rates which bear a certain relation to the rates offered on similar products by the lines running to Atlanta from Cairo, Memphis, Greenville, Vicksburg, New Orleans, Mobile, and other Mississippi River and Gulf points, and by the lines running to Atlanta from Boston, New York, Philadelphia, Baltimore, and other North Atlantic ports.

The rates from Cincinnati and other Ohio River points to Chattanooga are fixed by the active competition which exists between various lines of transportation which run from Cincinnati and other Ohio River points to Chattanooga.

The Louisville & Nashville Railroad from Cincinnati to Nashville, and the Nashville, Chattanooga & St. Louis Railway from Nashville to Chattanooga, forms one of said lines; and it is impossible for that line to obtain higher rates from Cincinnati and other Ohio River points to Atlanta than are charged by its competitors.

Said rates from Cincinnati and other Ohio River points to Chattanooga are divided between the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company individually in certain agreed proportions. The Nashville, Chattanooga & St. Louis Railway Company as lessee of the Western & Atlantic Railroad receives no proportion of said rates, because as such lessee it renders no part of the transportation between the Ohio River and Chattanooga.

Freight rates from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, are

combination rates, arrived at by taking the rates from Cincinnati and other Ohio River points to Chattanooga and adding thereto certain reasonable local rates from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, respectively.

Said local rates are reasonable and are such as are approved by the railroad commission of the State of Georgia, under an act
92 of the legislature of that State which authorizes said commission to decide upon the reasonableness of such rates.

When freights are tendered to the Louisville & Nashville Railroad Company at Cincinnati and other Ohio River points destined to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, Georgia, it issues its own bills of lading, and guarantees that the total rates to destination shall not exceed the through rates to Chattanooga, added to the local rates charged on the Western & Atlantic Railroad, on such shipments from Chattanooga to said points of destination, respectively; but respondent does not obligate itself, or any of its said connections, for the continuous carriage or shipment of such freight beyond their own lines respectively; nor does respondent assume to control in any way the local rates which may be charged upon such freights for transportation over the Western & Atlantic Railroad.

Respondent as one of the connecting carriers does not receive any part of the local rates charged for the transportation over the Western & Atlantic Railroad from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta; and it is wholly immaterial to respondent as such connecting carrier whether freight shipped from Cincinnati and other Ohio River points stop at Chattanooga or go forward to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta.

As before stated, the Nashville, Chattanooga & St. Louis Railway Company as lessee of the Western & Atlantic Railroad declines to form a through route or to agree upon through rates to its said local stations from Cincinnati and other Ohio River points.

It receives shipments destined to such stations for the first time at Chattanooga, and insists upon charging the same rates from Chattanooga to destination as if said shipments had originated at Chattanooga.

As before stated, respondent and the Nashville, Chattanooga & St. Louis Railway Co. individually, and as lessee of the Western & Atlantic Railroad, charges the highest through rates which competition will allow them to obtain on all through freights shipped from Cincinnati and other Ohio River points to Atlanta; and if they should be forced, by decree in this case, to raise said rates to Atlanta, such shipments would go by rival lines.

While the proportions which the Nashville, Chattanooga & St. Louis Railway as lessee of the Western & Atlantic Railroad receives of such through rates to Atlanta are small, they are more than the additional cost of such transportation; and therefore it is to the interest of that company as such lessee as well as of the public, that it should be allowed to compete for that traffic. But if said company as such
93 lessee were forced to carry all of its traffic at rates as low as the proportions which it receives from said through rates, it would be impossible for it to earn operating expenses.

If the order made by the Commission in this case should be enforced, said company, as such lessee, would be forced to abandon said through

rates to Atlanta and adhere to its present local rates to Calhoun, Adairsville, Kingston, Acworth, Cartersville, and Marietta. Those stations therefore would not be benefited in the least, and the only result would be to deprive Atlanta of the benefit of the competition now afforded by that company, as such lessee, and to deprive that company, as such lessee, of such revenue as it now derives from the Atlanta traffic.

And having fully answered, respondent prays to be hence dismissed with its reasonable costs.

[L. S. SEAL.] ED. BAXTER,
Solicitor for respondent, Louisville and Nashville Railroad Company.
By M. H. SMITH, *President.*

Attest:

J. H. ELLIS, *Secretary.*

STATE OF KENTUCKY, *Jefferson County:*

Personally appeared before me, G. W. B. Olmstead, a notary public duly appointed, commissioned, and qualified in and for the State and county aforesaid, M. H. Smith and J. H. Ellis, who are respectively the president and secretary of the Louisville and Nashville Railroad Company, the above-named respondent, and signed the foregoing answer, and affixed thereto the seal of said company as the answer of said company.

Witness my hand and notarial seal of office, at Louisville, Ky., this 8th day of August, 1893.

[SEAL OF N. P.] G. W. B. OLMSTEAD,
Notary Public.

Filing: Filed in clerk's office 10 day of Aug., 1893. O. C. Fuller, clerk.

94 *Stipulation of counsel relative to certain testimony to be used in cases Nos. 524, 525, and 526.*

In the United States circuit court for the northern district of Georgia.
In equity, at Atlanta.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP CO., THE ATLANTA & WEST POINT R. R. CO., et al.

In the United States circuit court for the northern district of Georgia.
In equity, at Atlanta.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE CLYDE STEAMSHIP CO., THE GEORGIA RAILROAD & BANKING CO., et al.

In the United States circuit court for the northern district of Georgia.
In equity at Atlanta.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC R. R. CO. ET AL.

Stipulation.

In the above cases it is stipulated and agreed by counsel as follows, viz:

I. The testimony of witnesses, the extracts from rates on file with the

Interstate Commerce Commission, the extracts from annual reports filed by carriers with said.....Commission, the extracts from statistical or other data compiled by, or on file in the offices of, the statistician and auditor of said Commission which were used by said Commission on the hearing of the above-mentioned cases may be used by either of the parties as evidence on the hearing of any one or more of the above-meationed cases in the United States circuit court, subject to objection by either party as to its competency or
95 relevancy in any one or more of said cases in which it may be offered or relied upon; but all formal objections are waived. A copy of said testimony and of extracts, certified by the secretary of said Commission, shall be filed in each of the above-mentioned circuit courts, and it may be used, subject to the above-mentioned objections, as evidence in any one or more of the above-mentioned cases.

II. Counsel will join in an application to the United States circuit court for the northern district of Georgia, to hear at one and the same time the three cases mentioned above as pending in that court; and they will join in an application to the United States circuit court for the southern district of Georgia, to hear at one and the same time the two cases mentioned above as pending in that court.

III. Either party on the hearing of any one or more of the above-mentioned cases in the United States circuit court may use as evidence additional extracts from rates on file with said commission, additional extracts from annual reports filed by carriers with said commission, and additional extracts from statistical or other data compiled by or on file in the offices of the statistician and auditor of said commission, subject to objection by either party, as to its competency or relevancy, in any one or more of said cases in which it may be offered or relied upon; but all formal objections are waived. Copies of such extracts as may be intended to be used by either party shall be certified by the secretary of said commission, and furnished to the opposite party, who shall have fifteen days thereafter in which to file counter extracts or testimony. Either party filing such extracts shall at the same time indicate*d* in which of the above-mentioned cases they are to be used.

June 19, 1897.

L. A. SHAVER,
Solicitor for the Interstate Commerce Commission.
ED. BAXTER,
Solicitor for the Defendants as of Record.

Filing: Filed in clerk's office June 21st, 1897. O. C. Fuller, clerk.

Stipulation as to depositions of E. Strickland, J. W. Vaughan, J. E. Fields, Thomas Lumpkin, and J. W. Knight.

In the circuit court of the United States for the northern district of Georgia.

96 THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

In the above-entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the depositions

of the following-named witnesses for the complainant, to wit, E. Strickland, J. W. Vaughan, J. E. Fields, Thomas Lumpkin, and J. W. Knight, of Cartersville, Ga., may be taken on the foregoing and annexed direct and cross interrogatories, and may be read in evidence on the hearing of said cause subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that Paul F. Akin, esq., of Cartersville, may act as commissioner in taking said depositions. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.
ED. BAXTER,
Counsel for the Defendants.

Filing: Filed in clerk's office 23 day of Mch., 1897. O. C. Fuller, clerk, by J. D. Steward, deputy.

Interrogatories to E. Strickland, J. W. Vaughan, J. E. Fields, Thomas Lumpkin, and J. W. Knight.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

Interrogatories filed in the above-entitled cause in behalf of the complainant therein, and to be exhibited to E. Strickland, J. W. Vaughan, J. E. Fields, Thomas Lumpkin, and J. W. Knight, of Cartersville, Ga.

Interrogatory No. 1. What is your name and residence, and in what occupation or business are you engaged?

97 Interrogatory No. 2. If you say you reside at Cartersville, Ga., state how long that place has been your residence, and how long you have been engaged in business there, and in what business.

Interrogatory No. 3. State whether merchants of Atlanta, Ga., sell goods and do business at Cartersville, Marietta, Acworth, Kingston, Adairsville, Calhoun, and also in territory around those points.

Interrogatory No. 4. Name points or localities around or beyond Cartersville, from Atlanta, at which Atlanta merchants sell goods or do business, and state how far such points are from or beyond Cartersville, and whether goods, in order to reach such points, from Atlanta, have to be hauled through Cartersville, and over what road.

Interrogatory No. 5. State whether merchants of Cartersville attempt to sell goods and do business at such points, in territory around and beyond Cartersville, and whether, in doing so, they come in competition with merchants of Atlanta.

Interrogatory No. 6. State whether Cartersville merchants can successfully compete with Atlanta merchants in selling goods and doing business at Cartersville, and in territory around and beyond Cartersville.

Interrogatory No. 7. If, in answer to the preceding interrogatory, you state that Cartersville merchants are placed at a disadvantage in this

competition with Atlanta merchants, state what this disadvantage results from.

Interrogatory No. 8. If, in answer to the preceding interrogatory, you say this disadvantage results from a discrimination in rates in favor of Atlanta and against Cartersville, give examples of this discrimination in rates in the sale of dry goods, groceries, etc.

Interrogatory No. 9. State how long this discrimination in favor of Atlanta has existed, and what effect, if any, it has had in retarding the growth of Cartersville.

98 Interrogatory No. 10. State whether Cartersville merchants buy their goods from Atlanta or direct from Cincinnati or other sources of supply, and when goods are bought in Cincinnati, whether they are shipped to Cartersville under a through bill of lading, naming a through rate to Cartersville, and whether goods are hauled through from Cincinnati to Cartersville without transfer or breakage of bulk, and in the same cars in which they were originally loaded.

Interrogatory No. 11. State the population and mercantile and manufacturing enterprises of Cartersville.

Interrogatory No. 12. Are there any other railway lines or roads reaching Cartersville besides the Western & Atlantic? If so, state whether such other lines or roads have connections with roads leading to or from Cincinnati. Name such lines and connections.

Interrogatory No. 13. Do transportation rates or charges enter into and affect the prices of which yourself and other Cartersville merchants can sell goods to consumers in and around Cartersville?

Interrogatory No. 14. How would a reduction in the rates on goods of all classes from Cincinnati to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun, so as to make the rates to those points not higher than the rates to Atlanta, affect the prices at which merchants at Cartersville, Marietta, Acworth, Adairsville, Kingston, and Calhoun could sell goods to their customers? Would such reduction in rates lower or raise such prices?

Interrogatory No. 15. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when goods are cheap, or when they are high? What is your opinion and experience in reference to this matter?

Interrogatory No. 16. Will a reduction in the rates on all classes of goods from Cincinnati to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun, so as to make the rates to those points not higher than the rates from Cincinnati to Atlanta, increase or

99 diminish the tonnage of traffic which will be hauled by the roads to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun? Give your reason for whatever opinion you may express in answer to this interrogatory.

Interrogatory No. 17. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality, and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Interrogatory No. 18. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality have on its prosperity or progress in the respects named in the preceding interrogatory?

Interrogatory No. 19. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for Complainant.

Cross-examination:

Cross-examination waived.

ED. BAXTER,
Counsel for Defendants.

Answers of J. W. Vaughan.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

Answers to direct interrogatories propounded to J. W. Vaughan, a material witness for the plaintiff in the above-entitled case.

The witness, J. W. Vaughan, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

100 Answer to interrogatory No. 1: My name is James W. Vaughan; my residence is Cartersville, Ga.; I am engaged in the dry-goods business.

Answer to interrogatory No. 2: I have resided in Cartersville since the 23d of January, 1890; I have been engaged in the dry-goods business since residing here.

Answer to interrogatory No. 3: They do.

Answer to interrogatory No. 4: Atlanta merchants sell goods and do business in Kingston, Adairsville, Rome, and Cedartown; these points are 10, 20, 30, and 36 miles from here, respectively; to the first two points named, they must be hauled through Cartersville over the Western & Atlantic Railroad; to Rome they go over the Western & Atlantic Railroad and Rome Railroad; to Cedartown, over the Western & Atlantic Railroad and East & West Railroad of Alabama.

Answer to interrogatory No. 5: They do.

Answer to interrogatory No. 6: They can not.

Answer to interrogatory No. 7: Cartersville merchants can not successfully compete with merchants of Atlanta because of the discrimination in freight rates against Cartersville in favor of Atlanta.

Answer to interrogatory No. 8: First-class rates from New York to Atlanta or Rome is $1.14 per hundred pounds and to Cartersville the same rate is $1.38. This difference of 24 cents against us would cover our profit on heavy or stable goods.

Answer to interrogatory No. 9: This discrimination against Cartersville in favor of Atlanta and Rome has existed ever since I have lived

in Cartersville to my certain knowledge. It has retarded the growth of Cartersville and makes it impossible to do a wholesale or jobbing business here.

101 Answer to interrogatory No. 10: Cartersville merchants buy their goods from Atlanta, New York, Cincinnati, and may [many] other points; my goods are shipped from New York to Cartersville under a through bill of lading, at $1.38 per hundred pounds on first-class goods. I cannot answer to remainder of this interrogatory.

Answer to interrogatory No. 11: The population of Cartersville is about 3,000; there are no manufacturing enterprises of any consequence in Cartersville and no mercantile enterprises except the ordinary dry-goods and grocery stores.

Answer to interrogatory No. 12: Yes. The East & West Railroad; it connects with the Southern Railroad at Rockmart and the C. R. & C. R. R. at Cedartown for Cincinnati.

Answer to interrogatory No. 13: Yes.

Answer to interrogatory No. 14: A rate from Cincinnati or New York to Cartersville and other points mentioned in the interrogatory equalled to the Atlanta and Rome rate would put us on an equal footing with them and enable us to reach a trade which we cannot now sell. Such rates would lower prices.

Answer to interrogatory No. 15: The lower the price the greater the consumption of goods. This is my opinion and has been my experience.

Answer to interrogatory No. 16: A reduction of rates on goods of all classes from Cincinnati to Cartersville and other named points will increase the tonnage of traffic hauled by the roads to Cartersville and other named points, because we could sell goods for less price and reach out into broader territory.

Answer to interrogatory No. 17: Low rates affords opportunities for jobbing houses, manufacturing enterprises, the investment of capital, and necessarily the employment of a great number of hands to operate these enterprises, thereby promoting prosperity and increasing the population of the locality which has low or preferential rates.

102 Answer to interrogatory No. 18: High, or rates which discriminate against a locality have just the opposite effect as low or preferential rates, as stated in the preceding interrogatory.

Answer to interrogatory No. 19: It is impossible for a locality to thrive or prosper unless it can share the same through rates as other localities with which it would naturally compete for business. Capital seeking investment would not locate at a point where there is the least discrimination in freight rates against such locality; and for that reason Cartersville has not been successful in influencing the building of or fostering manufacturing enterprises. We cannot conduct a wholesale business in any line or manufacture until we secure a lower rate.

J. W. VAUGHAN. [L. S.]

Answer sworn to and subscribed to before me, commissioner, Cartersville, Ga., this Sept. 21, 1897.

PAUL F. AKIN, [L. S.]
Commissioner.

Answer of Thomas Lumpkin.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE WESTERN & ATLANTIC RAILROAD COMPANY et al.	In equity, No. 524.

Answers to direct interrogatories propounded to Thomas Lumpkin, a material witness for the plaintiff in the above entitled case:

The witness, Thomas Lumpkin, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

Answer to interrogatory No. 1: My name is Thomas Lumpkin; my residence is Cartersville, Ga.; I am engaged in the hardware, implement, and machinery busines.

Answer to interrogatory No. 2: I have lived inside of the city limits for the last five years; I have lived within three miles of Carters-
103 ville for 25 years; I was engaged in the implement and machinery business for 10 or 12 years and for the last five years in the hardware business also.

Answer to interrogatory No. 3: Merchants of Atlanta, Ga., do sell goods and do business in Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun, and also in the territory around these points.

Answer to interrogatory No. 4: Merchants of Atlanta, Ga., sell goods and do business in Marietta, Acworth, Adairsvilie, Kingston, and Calhoun; these points are from ten to twenty-eight miles from Cartersville; goods sold at these places have to be hauled over the Western & Atlantic Railroad and to Kingston, Adairsville, and Calhoun have to be hauled through Cartersville; merchants of Atlanta also do business and sell goods in Stilesboro, Rockmart, and Taylorsville; the goods are hauled either by the Southern Railway, or by the Western & Atlantic Railroad to Cartersville, and then over the East & West Railroad to these points.

Answer to interrogatory No. 5: I do attempt to sell goods at points and in the territory around Cartersville and come in competition with the merchants of Atlanta.

Answer to interrogatory No. 6: They can not.

Answer to interrogatory No. 7: The merchants of Cartersville are placed at a disadvantage with the merchants of Atlanta because of the discrimination in freight rates against Cartersville.

Answer to interrogatory No. 8: The freight rates, per hundred pounds, on mowers and reapers from Chicago to Atlanta is 58 cents, and from the same point to Cartersville is 59 cents, on carloads. The freight rate on drills from Springfield, Ohio, is eleven cents more to Cartersville, per hundred pounds, than it is to Atlanta, which amounts to about $30.00 per car. Atlanta has the same advantage on buggies from Cincinnati.

Answer to interrogatory No. 9: This discrimination has existed in favor of Atlanta for about 12 years, so far as I know, and has retarded the growth of Cartersville.

104 Answer to interrogatory No. 10: I buy the great bulk of my goods from Cincinnati, Ohio, and other points in the West, a very little from Atlanta. Goods are shipped from Cincinnati, Ohio, under a through bill of lading, naming a through rate to Cartersville, and are hauled through without a transfer or breakage of bulk and in the same cars in which they are originally loaded.

Answer to interrogatory No. 11: The population of Cartersville is about 3,500; there is a carriage factory and ice factory in Cartersville; there is an ochre mill and a great many mining enterprises around Cartersville. There is about ten thousand bales of cotton shipped from Cartersville every year.

Answer to interrogatory No. 12: There is one railroad reaching Cartersville besides the Western & Atlantic, the East & West of Alabama; it connects with the Southern Railway, the C. R. & C. R. R., also a connection from Birmingham for Cincinnati.

Answer to interrogatory No. 13: Yes.

Answer to interrogatory No. 14: If a reduction of rates from Cincinnati was made, so as to make the rate the same at [as] the rate to Atlanta from Cincinnati, the merchants of Cartersville would be enabled to sell their goods cheaper and thus be able to compete with the merchants of Atlanta.

Answer to interrogatory No. 15: The price of goods do affect the sale of goods; more goods are sold when they are cheap. This has been my experience and is my opinion.

Answer to interrogatory No. 16: A reduction of the rates on all classes of goods from Cincinnati to Cartersville (I don't know about the other places), so as to make the rates not higher to this point than to Atlanta, would greatly increase the tonnage of traffic to this point. My implement and machinery business extends over a large territory. I frequently find that I can not ship goods to Cartersville and distribute them with profit, and successfully compete with the merchants of Atlanta,
105 because of the discrimination in rates in favor of Atlanta. This also applies to buggies and wagons. I have often found it necessary to ship goods to Atlanta, in less than carload lots, and then reship to Cartersville, and could thereby save freight.

Answer to interrogatory No. 17: Low or preferential rates to a locality have a tendency to increase business, induces the investment of capital there, increases the population, and generally increases the prosperity of such locality.

Answer to interrogatory No. 18: High rates, or rates which discriminate against a locality, have just the opposite effect as low or preferential rates, as stated in the preceding interrogatory.

Answer to interrogatory No. 19: Rome and Atlanta having the same freight rate, which is lower than that to Cartersville, and Cartersville being situated between the two, this discrimination in favor of Rome and Atlanta is ruinous to the business of Cartersville. Cartersville being situated in the center of a fine agricultural and mineral region, if it had the same freight rates as Rome and Atlanta, the business of Cartersville would be very greatly increased, the property would increase in value, the population would increase and the town and community generally benefited.

THOS. LUMPKIN. [L. S.]

Answered, sworn to, and subscribed to before me, commissioner, at Cartersville, Ga., Sept. 20, 1897.

PAUL F. AKIN, [L. S.]
Commissioner.

Answer of J. W. Knight.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

Answers to direct interrogatories propounded to J. W. Knight, a material witness for the plaintiff in the above-entitled case.

The witness, J. W. Knight, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

106 Answer to interrogatory No. 1: My name is J. W. Knight; my residence is Cartersville, Ga.; I am engaged in the hardware business.

Answer to interrogatory No. 2: I have resided here for about thirty years; I have been engaged in business for about 12 years; the hardware business all the time.

Answer to interrogatory No. 3: They do.

Answer to interrogatory No. 4: Merchants of Atlanta, Ga., sell goods and do business in Kingston, Adairsville, and Calhoun. These points are ten, twenty, and thirty miles, respectively, from Cartersville, Stilesboro, Rockmart, and Taylorsville; these points are ten, fifteen, and twenty-five miles, respectively, from Cartersville. Goods, to reach the first three named places, have to be hauled through Cartersville and over the Western & Atlantic Railroad. Goods, to reach the last three named points, namely, Stilesboro, Rockmart, and Taylorsville, have to be hauled through Cartersville, over the Western & Atlantic Railroad, and from Cartersville over the East & West Railway.

Answer to interrogatory No. 5: They do.

Answer to interrogatory No. 6: They can not.

Answer to interrogatory No. 7: Cartersville merchants are placed at a disadvantage with merchants of Atlanta, because of the discrimination in freight rates against Cartersville.

Answer to interrogatory No. 8: The freight rate on grain drill to Cartersville from Louisville is $1.03 per hundred pounds on less than car loads, and to Atlanta it is 92 cents.

Answer to interrogatory No. 9: This discrimination in rates against Cartersville has existed, to my certain knowledge, ever since I have been in business here. Merchants here could do no jobbing busi-
107 ness; all the trade has had to be purely local, and that always retards the growth of any town.

Answer to interrogatory No. 10: Merchants buy their goods from Atlanta, Cincinnati, and many other points. Goods bought in Cincinnati are shipped through to Cartersville on a through bill of lading, naming a through rate, and if in car lots are shipped without transfer and in the same cars in which they are originally loaded.

Answer to interrogatory No. 11: The population of Cartersville is about three thousand. There is an ice factory, carriage factory, and ochre mills in Cartersville. There are no mercantile enterprises except the retail dry goods and grocery houses.

Answer to interrogatory No. 12: Yes. The East & West Railway reaches Cartersville and connects with the Southern Railway at Rockmart for Cincinnati. It also connects with the C. R. & C. R. R. at Cedartown for Cincinnati.

Answer to interrogatory No. 13: Yes.

Answer to interrogatory No. 14: If a reduction of rates on all goods of all classes from Cincinnatti to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun was made so as to make the rate the same as that to Atlanta would cause a reduction in the price of goods at which I and merchants of the other named places could sell their goods.

Answer to interrogatory No. 15: The lower the price of goods the greater the consumption. This has been my experience and is my opinion.

Answer to interrogatory No. 16: If a reduction on goods of all classes was made from Cincinnati to Cartersville, Marietta, Acworth, Adairsville, and Calhoun, so as to make the rate the same as that to Atlanta, it would increase the tonnage of traffic, because the goods would be cheaper, the sale would be greater, and the merchants would have to buy more goods.

Answer to interrogatory No. 17: Low or preferential rates to a
108 locality have a tendency to increase the population. They attract the investment of capital there, the building of factories and other enterprises, and generally promote the prosperity of such locality.

Answer to interrogatory No. 18: High or rates which discriminate against a locality have just the opposite effect as low or preferential rates, as stated in the preceding interrogatory.

Answer to interrogatory No. 19: I know of no other matter that may be of benefit to either party in this case or that is material thereto.

J. W. KNIGHT. [L. S.]

Answered, sworn to, and subscribed to before me, commissioner, at Cartersville, Ga., this Sept. 22, 1897.

PAUL F. AKIN, [L. S.]
Commissioner.

Answers of J. E. Field.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

Answers to direct interrogatories propounded to J. E. Field, a material witness for the plaintiff in the above entitled case.

The witness, J. E. Field, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

Answer to interrogatory No. 1: My name is J. E. Field; my residence

is Cartersville, Ga.; I am engaged in selling mules, fertilizers, cotton, and machinery.

Answer to interrogatory No. 2: Cartersville has been my residence since 1858. I have been engaged in business since 1887. I was in the mule and horse business alone up to 6 years ago. Since then I have been in the cotton, fertilizer, and machinery business also.

Answer to interrogatory No. 3: Merchants of Atlanta, Ga., do
109 sell goods and do business in Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun, and in the territory around these points.

Answer to interrogatory No. 4: Merchants of Atlanta do business and sell goods in Marietta, Acworth, Kingston, Adairsville, and Calhoun; these points are from 10 to 28 miles from Cartersville; goods have to be hauled over the Western & Atlantic Railroad to these points and through Cartersville to Kingston, Adairsville, and Calhoun; merchants of Atlanta also do business and sell goods in Stilesboro and Taylorsville; these points are from twelve to seventeen miles from Cartersville; goods to these points have to be hauled to Cartersville over the Western & Atlantic Railroad and then over the East & West of Alabama.

Answer to interrogatory No. 5: They do.

Answer to interrogatory No. 6: They can not.

Answer to interrogatory No. 7: Cartersville merchants are placed at a disadvantage because of the discrimination in rates against Cartersville in favor of Atlanta.

Answer to interrogatory No. 8: The freight rate on mules from St. Louis to Cartersville is $115.00, to Atlanta it is $95.00. The freight rate on fertilizers from Charleston, S. C., per ton to Cartersville is $3.89; to Rome it is $3.00. Rome is beyond Cartersville. The above rates are what I have always paid in the past.

Answer to interrogatory No. 9: This discrimination in favor of Atlanta against Cartersville has existed to my certain knowledge ever since I have been in business here; it has greatly retarded the growth of Cartersville.

Answer to interrogatory No. 10: Merchants of Cartersville buy some of their goods from merchants of Atlanta, but they get the great bulk of their goods from Cincinnati and other points in the West; goods bought in Cincinnati are shipped through to Cartersville under a through bill of lading, naming a through rate to Cartersville, and in the same cars in
which they were originally loaded.

110 Answer to interrogatory No. 11: The population of Cartersville is about 3,600; the manufacturing enterprises of Cartersville are an ice factory, carriage factory, and ochre mill; I know of no mercantile enterprises except the retail grocers and dry goods.

Answer to interrogatory No. 12: There is one railroad reaching Cartersville besides the Western & Atlantic, the East & West of Alabama; it connects with the Southern Railway at Rockmart for Cincinnati; it also connects with the C. R. & C. R. R. at Cedartown for Cincinnati.

Answer to interrogatory No. 13: They do.

Answer to interrogatory No. 14: If a reduction of rates on all goods of all classes from Cincinnati to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun was made, it would lower the price of

goods in those points and enable the merchants of those places to compete with Atlanta merchants.

Answer to interrogatory No. 15: When goods are cheap, merchants can do a great deal larger business and sell more goods. This has been my experience and is my opinion.

Answer to interrogatory No. 16: If a reduction of the rates to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun was made so as to be on an equal footing with Atlanta, the tonnage of traffic would be doubled. I am sure it would at Cartersville, because there are a great many mines around Cartersville which are not now being worked on account of the rates being so high.

Answer to interrogatory No. 17: Low or preferential rates to a locality have a tendency to increase the population because they promote the prosperity generally and induce the investment of capital there.

Answer to interrogatory No. 18: High, or rates which discriminate against a locality have just the opposite effect which low or preferential rates have, as stated in the preceding interrogatory.

111 Answer to interrogatory No. 19: There have been several manufacturing enterprises here which have had to close up their business and leave on account of the discrimination in rates against Cartersville. They could not successfully compete with other points which had a lower rate.

J. E. FIELD. [L. S.]

Answered, sworn to, and subscribed to before me, commissioner, at Cartersville, Ga., this Sept. 27, 1897.

PAUL F. AKIN, [L. S.]
Commissioner.

Answers of E. Strickland.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

Answers to direct interrogatories propounded to E. Strickland, a material witness for the plaintiff in the above-entitled case.

The witness, E. Strickland, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

Answer to interrogatory No. 1: My name is E. Strickland. My residence is Cartersville, Georgia. I am engaged in the grocery busines'.

Answer to interrogatory No. 2: I have lived in Cartersville, Ga., twelve years. In 1892 I was not engaged in any business. With that exception I have been in the grocery business.

Answer to interrogatory No. 3: Merchants of Atlanta, Ga., do business at Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun, and also in the territory around these points.

Answer to interrogatory No. 4: Atlanta merchants do business and sell goods in ..... Kingston, Adairsville, Calhoun, Acworth, and Marietta, and surrounding territory: the above-named places are from ten to thirty miles from Cartersville; goods
112 have to be hauled through Cartersville to Kingston, Adairsville, and Calhoun, and the goods have to be hauled over the Western & Atlantic Railroad. Merchants also do business and sell goods in Stilesboro, Taylorsville, and Cedartown, and Rockmart; the above-named places are from ten to thirty-six miles from Cartersville; the goods have to be hauled over the Western & Atlantic Railroad to Cartersville, and then over the East & West Railroad.

Answer to interrogatory No. 5: Merchants of Cartersville do attempt to do business in the places named in the answer to the 4th interrogatory, and thereby come in competition with merchants of Atlanta, Ga.

Answer to interrogatory No. 6: The merchants of Cartersville can not successfully compete with the merchants of Atlanta in selling goods and doing business in Cartersville and the territory and places around Cartersville.

Answer to interrogatory No. 6: The disadvantage that Cartersville merchants are placed in, as testified to in the preceding interrogatory, is due to the fact that the freight rates are lower to Atlanta, Ga., from all points than they are from the same points to Cartersville.

Answer to interrogatory No. 8: The following is an example of the discrimination in the freight rates in favor of Atlanta against Cartersville: There is thirteen cents more per hundred pounds charged on meat from Chicago to Cartersville than there is from Chicago to Atlanta; for example, the rate from Chicago to Atlanta per hundred pounds on meat is 47 cents, and the rate to Cartersville is 60. Another example, bagging: the rate per hundred pounds is 20 cents to Atlanta, Rome, Cedartown, and Dalton, and 31 cents to Cartersville from Charleston, S. C., while Rome, Cedartown, and Dalton are beyond Cartersville.

Answer to interrogatory No. 9: The discrimination in rates in favor of Atlanta against Cartersville has existed, to my certain knowledge, for twelve years, and has retarded the growth of and worked a great injury to Cartersville.

Answer to interrogatory No. 10: The merchants of Carters-
113 ville buy some of their goods from Atlanta, but most of them from northern and western points. When goods are bought from Cincinnati in car loads, they are shipped on a through bill of lading to Cartersville, and shipped in the car originally loaded in; in less than car loads, they are shipped on through bill of lading, but change car.

Answer to interrogatory No. 11: The population of Cartersville is about 3,500. There is a carriage factory, ice factory, and ochre mill situated in Cartersville. There are no mercantile enterprises except the retail merchants.

Answer to interrogatory No. 12: There is one railroad, besides the Western & Atlantic, which reaches Cartersville—the East & West Railroad of Alabama. The East & West Railroad connects with the Southern Railway at Rockmart, Ga., and the Southern Railway connects with Cincinnati.

Answer to interrogatory No. 13: Yes.

Answer to interrogatory No. 14: A reduction of rates on goods of all classes from Cincinnati to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun would reduce the price at which merchants of these places could sell their goods. Such reduction would lower the prices of goods sold by Cartersville merchants and the merchants of Marietta, Acworth, Kingston, Adairsville, and Calhoun.

Answer to interrogatory No. 15: When the prices on goods are low the consumption is greater. More goods are sold to consumers when the goods are cheap. This is my opinion and experience.

Answer to interrogatory No. 16: A reduction of the rates on all classes of goods from Cincinnati to Cartersville, Marietta, Acworth, Kingston, Adairsville, and Calhoun would increase the tonnage of traffic hauled by the roads to the above-named places. This is my opinion. If a reduction of the rates was made, the merchants of Cartersville and the above-named places could get their goods cheaper, and could thereby successfully compete with the points that now have through and lower freight rates than Cartersville and the other named places, and could control the trade of their respective territories.

114 Answer to interrogatory No. 17: Low or preferential rates to a locality have a tendency to increase the population of that locality and to induce the investment of capital there, and generally promotes the prosperity of such locality.

Answer to interrogatory No. 18: High rates, or rates which discriminate against a locality, have just the opposite effect as that stated in the preceding paragraph.

Answer to interrogatory No. 19: Cartersville is surrounded by four points—Rome, Dalton, Cedartown, and Atlanta—which points enjoy through rates and commodity rates, lower than the rates to Cartersville, and which enable them to come into the territory which naturally and legitimately belongs to Cartersville, and do business which the merchants of Cartersville could do if they had the same rates as the above-named points.

E. STRICKLAND. [L. S.]

Answered, sworn to, and subscribed to before me, commissioner, at Cartersville, Ga., this Sept. 14, 1897.

PAUL F. AKIN, [L. S.]
Commissioner.

I, Paul F. Akin, of Cartersville, Ga., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witnesses, to wit, E. Strickland, J. E. Field, J. W. Vaughan, Thomas Lumpkin, and J. W. Knight, and after having duly sworn them to speak the truth, the whole truth, and nothing but the truth, took down their answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by each of said witnesses.

This Sept. 27, 1897.

PAUL F. AKIN, [L. S.]
Commissioner.

[Indorsements on envelope.]

To O. C. Fuller, esq., clerk of the circuit court of the United States for the northern district of Georgia, Atlanta, Ga.

Received of Paul F. Akin, commissioner in the above-stated case, the interrogatories of E. Strickland, J. E. Field, J. W. Vaughan, J. W. Knight, and Thomas Lumpkin, this Sept. 28, 1897. Martin Collins, P. M. Atlanta, Ga. Received by due course of mails this 29 day of September, 1897. Amos Fox, P. M.

Received from the hands of the postmaster at Atlanta, Ga., and filed this 29 day of Sept., 1897. O. C. Fuller, clerk.

115 *Stipulation as to depositions of W. L. Sessions, H. C. Dobbs, Joe P. Legg, and D. N. Anderson.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

In the above entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the depositions of the following-named witnesses for the complainant, to wit, W. L. Sessions, H. C. Dobbs, Joe P. Legg, and D. N. Anderson, of Marietta, Georgia, may be taken on the foregoing and annexed direct and cross-interrogatories, and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that George D. Anderson, esq., of Marietta, Georgia, may act as commissioner in taking said depositions. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHEAVER,
Counsel for the Interstate Commerce Commission.

ED. BAXTER,
Counsel for Defendants as of Record.

Filing: Filed in clerk's office, 12 day of Aug., 1897. O. C. Fuller, clerk; by J. D. Steward, deputy.

Interrogatories to W. L. Sessions, H. C. Dobbs, Joe P. Legg, and D. N. Anderson.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

Interrogatories filed in the above entitled cause on behalf of the complainant therein, and to be exhibited to W. L. Sessions, H. C. Dobbs, Joe P. Legg, and D. N. Anderson, of Marietta, Georgia.

116 Interrogatory No. 1. What is your name and residence, and in what occupation are you engaged?

Interrogatory No. 2. If you say you reside in Marietta, Georgia, state how long that place has been your residence, and how long you have been engaged in business there, and in what business?

Interrogatory No. 3. State whether merchants of Atlanta, Ga., sell goods and do business at Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun, and also in territory around those points?

Interrogatory No. 4. Name points or localities around or beyond Marietta from Atlanta, at which Atlanta merchants sell goods or do business, and state how far such points are from or beyond Marietta, and whether goods in order to reach such points from Atlanta have to be hauled through Marietta, and over what road?

Interrogatory No. 5. State whether merchants of Marietta attempt to sell goods and do business at such points in territory around and beyond Marietta, and whether in doing so they come in competition with merchants of Atlanta?

Interrogatory No. 6. State whether Marietta merchants can successfully compete with Atlanta merchants in selling goods and doing business at Marietta, and in territory around and beyond Marietta?

Interrogatory No. 7. If, in answer to the preceding interrogatory, you state that Marietta merchants are placed at a disadvantage in this competition with Atlanta merchants, state what the disadvantage results from?

Interrogatory No. 8. If, in answer to the preceding interrogatory, you say this advantage results from a discrimination in rates in favor of Atlanta and against Marietta, give examples of this discrimination in rates in the sale of dry goods, groceries, etc.

Interrogatory No. 9. State how long this discrimination favor
117 of Atlanta has existed and what effect, if any, it has had in retarding the growth of Marietta?

Interrogatory No. 10. State whether Marietta merchants buy their goods from Atlanta, or direct from Cincinnati, or other sources of supply, and when goods are bought in Cincinnati, whether they are shipped to Marietta, under a through bill of lading, naming a through rate to Marietta, and whether goods are hauled through from Cincinnati to Marietta, without transfer or breakage of bulk, and in the same cars in which they were originally loaded.

Interrogatory No. 11. State the population and mercantile and manufacturing enterprises of Marietta.

Interrogatory No. 12. Do transportation rates or charges enter into and affect the prices at which yourself and other Marietta merchants can sell goods to consumers in and around Marietta?

Interrogatory No. 13. How would a reduction in the rates on goods of all classes from Cincinnati to Marietta, Acworth, Cartersville, Kingston, Adairsdale, and Calhoun, so as to make the rates to those points not higher than the rates to Atlanta, affect the prices at which merchants at Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun could sell goods to their customers? Would such reduction in rates lower or raise such prices?

Interrogatory No. 14. How do prices of goods affect their sale or consumption? Are more goods sold to consumers when goods are cheap, or when they are high? What is your opinion and experience in reference to this matter?

Interrogatory No. 15. Will a reduction in the rates on all classes of goods from Cincinnati to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun, so as to make the rates to those points not higher than the rates from Cincinnati to Atlanta, increase or diminish the tonnage of traffic which will be hauled by the roads to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun? Give your reasons for whatever opinion you may express in answer to this interrogatory.

118 Interrogatory No. 16. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Interrogatory No. 17. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality have on its prosperity or progress in the respects named in the preceding interrogatory?

Interrogatory No. 18. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for the Complainant.

Cross-examination:

Cross-examination waived.

ED. BAXTER,
Solr. for Defts. as of Record.

Answers of Walter L. Sessions.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION,
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

STATE OF GEORGIA, *County of Cobb:*

By virtue of an agreement between counsel in the above stated cause, I have caused the witnesses hereinafter named to come before me separately and be examined touching the matters asked in the foregoing interrogatories.

The witness, Walter L. Sessions, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To the 1st interrogatory he answers: Walter L. Sessions, Marietta, Cobb County, Georgia, by occupation a merchant.

119 To the 2nd interrogatory he answers: I have resided in Marietta 22 years, and have been selling goods about 15 years.

To the 3rd interrogatory he answers: Atlanta merchants sell goods at Marietta, Acworth, Cartersville, Kingston, and Adairsville, and points in and around Marietta.

To the 4th interrogatory he answers: Acworth is about 15 miles from Marietta, Cartersville about 28, Kingston about 40, Kennesaw about 8, all on the W. & A. R. R., and goods to reach these points from Atlanta have to be hauled through Marietta over said road. Woodstock, Canton, Ball Ground, Tate, Holly Springs, are on the A., K. & N. R. R. at a distance from 12 to 46 miles from Marietta, and goods to reach these points from Atlanta have to pass through Marietta.

To the 5th interrogatory he answers: On account of discriminating freight rates, the merchants of Marietta can not compete with the merchants of Atlanta at these points.

To the 6th interrogatory he answers: No.

To the 7th interrogatory he answers: This disadvantage is a result of a discrimination in freight rates in favor of Atlanta and against Marietta.

To the 8th interrogatory he answers: Atlanta being 20 miles further from Cincinnati than Marietta is, the freight rate on 1st-class matter to Atlanta is $1.07 per 100 lbs., and to Marietta, on the same railroad, it is $1.27 per 100 lbs. on the same class, and goods bought by Atlanta merchants in Cincinnati would be hauled through Marietta to Atlanta at a lower rate of freight than they could be hauled to Marietta. Not only is this the case on 1st-class freight, but on all other classes of freight. On all classes the freight rate from Cincinnati and other Western points west of Chattanooga, Tenn., to Marietta is the rate from any of these points to Atlanta added to the local freight rate from Atlanta to Marietta.

To the 9th interrogatory he answers: This state of affairs has existed ever since my knowledge of business began 15 years ago; how much longer I do not know. It has had the effect of causing all mer-
120 chants who desire to do a wholesale business to leave Marietta and other points around here and go to Atlanta to do business, and has retarded the growth of Marietta by carrying away business capital, and has helped to build up Atlanta at the expense of Marietta. It has caused some factories to leave here for Atlanta, and a number of our citizens do business in Atlanta and live in Marietta.

To the 10th interrogatory he answers: Marietta merchants do buy goods from Cincinnati and other sources of supply, and their goods are shipped direct from Cincinnati and other Western points on a through bill of lading, and goods bought in carloads are hauled direct to Marietta without transfer or breakage and in the same cars in which they were originally shipped or loaded.

To the 11th interrogatory he answers: The population of Marietta is about 4,000. It does the largest marble business of any town in the State. It has two large chair factories, one large paper mill, one batt and waste mill, two foundries and machine shops, two planing mills, five marble yards, all working some five or six hundred hands, and having a large weekly pay roll. Marietta handles from ten to twelve thousand bales of cotton yearly, and does a business of about $8 every year.

To the 12th interrogatory he answers: Transportation rates enter into and affect the prices of goods in Marietta, and the higher freight makes the consumer pay a higher price for goods.

To the 13th interrogatory he answers: A reduction in the rates on all classes of goods from Cincinnati and other points on the W. & A. R. R. north and west of Chattanooga, Tenn., would have the effect of reducing

the price at which goods could be sold at Marietta, because the lower the cost of goods the lower they can be sold with a profit to the dealer. A reduction in freight rates would lower the price of goods to the consumer.

To the 14th interrogatory he answers: The cheaper goods can be sold, the more goods can be sold. More goods can be sold when they are cheap than when they are high.

To the 15th interrogatory he answers: A reduction in freight
121 rates to the points named would undoubtedly increase the tonnage of traffic hauled by the roads to said stations. I say this because a lower rate of freight would give a lower price on the same class of goods, and a lower price of goods will bring greater consumption, and a greater consumption of goods will cause more goods to be shipped, and the more goods that are shipped the more goods the roads will have to haul.

To the 16th interrogatory he answers: The lower the freight rate the greater the inducement to business men to settle in a place to sell goods, as they can sell goods cheaper and make the same profit, and the more goods that are sold in a place the more it is built up, and its progress is greater and its prosperity greater. It can compete better with other places and can do business further from home than a place with a high rate of freight.

To the 17th interrogatory he answers: High or discriminating rates against one locality and in favor of another retards its progress, as it impedes manufacturing enterprises, because the locality with cheaper freight rates offers bigger and better inducements for business men to engage in that kind of enterprises, and the locality with cheaper freight rates will sell more goods than the place with high rates, because the goods can be sold cheaper and the progress and prosperity of the place of low rates will be greater than the place with a high or discriminating rate.

To the 18th interrogatory he answers: I know of nothing more than I have stated that will be of benefit to the parties at issue.

WALTER L. SESSIONS.

Answers of D. N. Anderson.

The witness, D. N. Anderson, being duly sworn to speak the truth, the whole truth, and nothing but the truth, deposed as follows:

To the 1st interrogatory he answers: D. N. Anderson. I reside at Marietta, Georgia, and I am a merchant.

To the 2nd interrogatory he answers: I have been engaged in business at Marietta for about 20 years.

122 To the 3rd interrogatory he answers: Merchants of Atlanta do business at the points named in the 3rd interrogatory.

To the 4th interrogatory he answers: Besides the points named in the 3rd interrogatory, merchants of Atlanta do business at Woodstock and Canton, which are about 12 and 24 miles from Marietta, respectively, and goods to reach these points have to be hauled to Marietta on the W. & A. R. R., and then hauled over the A. K. & N. R. R. from Marietta.

To the 5th interrogatory he answers: The freight discrimination is such that they can not do much at selling goods at these points.

To the 6th interrogatory he answers: Not to any extent.

To the 7th interrogatory he answers: This disadvantage results from the excess in freight rates.

To the 8th interrogatory he answers: In most all cases we have to pay the rate to Atlanta from Louisville, Nashville, Chicago, Cincinnati, and other Western points and the local rate from Atlanta to Marietta.

To the 9th interrogatory he answers: It has existed for years. I do not know how long, and, of course, has hurt Marietta as a business point.

To the 10th interrogatory he answers: Goods bought in carload lots in Cincinnati and other points or sources of supply are shipped to Marietta in carload lots under a through bill of lading in the originally loaded car without transfer or breakage of bulk.

To the 11th interrogatory he answers: The population of Marietta is about 4,000, and we have chair factories, paper mills, waste mills, batt mills, knitting mills, marble mills, planing mills, foundries, and machine shops.

To the 12th interrogatory he answers: Transportation rates affect prices of goods at Marietta—the cost of transportation is added to the cost of the goods.

123 To the 13th interrogatory he answers: A reduction in freights from the points named would certainly lower the price at which the goods could be sold to the consumer.

To the 14th interrogatory he answers: More goods are sold to the consumer when they are cheap, and a point with cheap freight rates can compete better with other points than a point with high rates.

To the 15th interrogatory he answers: I think a reduction in freight rates from the points named to Marietta would increase the tonnage of traffic, because we would be able to compete with other points to advantage, and we could sell more goods because we could sell them cheaper, and the more sold the more the railroads would have to haul.

To the 16th interrogatory he answers: Freight rates have a great deal to do with the location of manufacturing enterprises of all kinds. Where cheap rates obtain they are much more apt to be located than where rates are high, and where capital is invested increases and promotes the prosperity of a place. Low freight rates are very beneficial to a place.

To the 17th interrogatory he answers: High rates to a locality, or rates that discriminate against a locality, tend to keep out all enterprises and to drive away capital—this hinders and retards the growth and prosperity of a locality.

To the 18th interrogatory he answers: I am a cotton dealer at Marietta, and ship about 6,000 bales of cotton a season. The W. & A. R. R. has been charging me on through cotton through Atlanta 19 cts. a hundred, but by shipping to Atlanta and reshipping to ports I get it at 13 cts. a hundred, the commission rate.

D. N. ANDERSON.

Answers of J. P. Legg.

The witness J. P. Legg, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

124 To the 1st interrogatory he answers: J. P. Legg. I reside at Marietta, Georgia, and am a merchant and cotton buyer.

To the 2nd interrogatory he answers: I have lived here for 12 years and have been engaged in this business for that time.

To the 3rd interrogatory he answers: They do.

To the 4th interrogatory he answers: Adairsville, Calhoun, Kennesaw, Cartersville, Acworth, are localities beyond Marietta from Atlanta at distances ranging from 12 to 70 miles, at which Atlanta merchants do business, and goods shipped to these points from Atlanta have to be hauled through Marietta over the W. & A. R. R.; and Canton, Woodstock, Holly Springs, Tate, Jasper, and Ellijay, are points on the A., K. & N. R. R. that are beyond Atlanta from Marietta at distances ranging from 12 to about 70 miles, and goods shipped from Atlanta to these points have to be hauled to Marietta on the W. & A. R. R. and then over the A., K. & N. R. R.

To the 5th interrogatory he answers: They can not compete with the merchants of Atlanta successfully in territory named, on account of the freight rates discriminating in favor of Atlanta.

To the 6th interrogatory he answers: They can not.

To the 7th interrogatory he answers: It results from the fact that the freight rates favor Atlanta as against Marietta.

To the 8th interrogatory he answers: The Marietta rate from Western and Eastern sources of supply is the through rate to Atlanta plus the local rate from Atlanta to Marietta.

To the 9th interrogatory he answers: This discrimination has existed ever since I have known anything of business here—I don't know for how much longer—and has retarded the growth of Marietta, as she can not compete with Atlanta and can not offer the inducements to capital that Atlanta can offer.

To the 10th interrogatory he answers: When goods are shipped from Cincinnati and other Western and Eastern sources of supply, they are shipped under a through bill of lading and are brought through to Marietta in the cars in which they are loaded originally. Marietta merchants buy goods direct at Cincinnati and other sources of supply.

To the 11th interrogatory he answers: The population of Marietta is about 5,000. We have planing mills, knitting mills, machine shops, paper mills, batt mills, marble mills, all shipping to and from Marietta over the W. & A. R. R.

To the 12th interrogatory he answers: They do.

To the 13th interrogatory he answers: It would be obliged to lower prices.

To the 14th interrogatory he answers: It is my experience that more goods are sold when goods are cheap.

To the 15th interrogatory he answers: It would certainly not diminish the tonnage of goods hauled. It would have a tendency to increase it, as there would be apt to be more goods consumed, as they could be sold cheaper.

To the 16th interrogatory he answers: Relatively low freight rates have a tendency to build up a locality, as it can offer inducements to capital to come to such a place.

To the 17th interrogatory he answers: High rates retard the progress of any locality, as it tends to drive away both capital and population to other places where better advantages can be secured.

To the 18th interrogatory he answers: All we want is equalized freight rates with other localities on the same road. Our natural advantages are good, but we will always be at a disadvantage when goods can be
126 hauled from Cincinnati through Marietta to Atlanta for a less rate of freight than they can be brought to Marietta from the same place.

J. P. LEGG.

Answers of H. C. Dobbs.

The witness, H. C. Dobbs, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To the 1st interrogatory he answers: H. C. Dobbs. I reside at Marietta, Georgia, and am engaged in the hardware business.

To the 2nd interrogatory he answers: I have been here all of my life, and been in the hardware business about 11 years.

To the 3rd interrogatory he answers: They do.

To the 4th interrogatory he answers: Kingston, Cartersville, Acworth, Kennesaw, Calhoun, and Adairsville are points beyond Marietta from Atlanta at distances from 7 to 70 miles, at which Atlanta merchants do business, and goods shipped from Atlanta to these points have to be hauled over the W. & A. R. R. and through Marietta.

To the 5th interrogatory he answers: I do, for one, attempt to sell goods around Marietta, and in doing so come in competition with Atlanta merchants. Atlanta competition is the strongest competition.

To the 6th interrogatory he answers: They can not.

To the 7th interrogatory he answers: The disadvantage results from the discriminating freight rates in favor of Atlanta and against Marietta.

To the 8th interrogatory he answers: Take nails; Atlanta merchant can buy nails at Cincinnati and haul them to Atlanta through Marietta and reship them back to Marietta and sell them at the same that I can, when I buy at the same place and in carload lots. They can compete with me here and points around here just as if they did business
127 in the same town with me, yet Atlanta is 20 miles further away from Cincinnati than Marietta is.

To the 9th interrogatory he answers: It has existed ever since I have been in business, and I don't know how much longer, and this has had the effect of retarding the growth of our town. We ought to have a population of from 10 to 15 thousand, while we only have about 5,000. The discriminating freight rates drive away both capital and population.

To the 10th interrogatory he answers: When merchants of Marietta buy goods in Cincinnati they are shipped through under a through bill of lading, and a rate is named to Marietta, a through rate, and there is no transfer or breakage of bulk—the goods come in the cars in which they were originally loaded.

To the 11th interrogatory he answers: Marietta has a population of about 5,000, and has two planing mills, knitting mills, marble mills, paper mills, machine shops, batt mills, chair factories, etc.

To the 12th interrogatory he answers: They do.

To the 13th interrogatory he answers: Such a reduction as is named in this interrogatory would lower prices at which goods could be sold to consumers at Marietta.

To the 14th interrogatory he answers: My experience is that more goods are sold when prices are cheap.

To the 15th interrogatory he answers: I believe the tonnage will be increased by lowering the freight rates, as it will enable the merchants along the line of the railroad to do more and larger business, as more goods are sold when goods are cheap. I do not believe that the railroads would lose anything by reducing rates so as to make all localities on an equality in the freight rates. What I mean is not to haul goods through a town to another place from the same place for less than the same goods can be carried to the first place mentioned.

To the 16th interrogatory he answers: Low rates to a place
128 tends to increase the manufacturing interests there, and invites capital and thus helps to build up the place; it will enable a particular place to compete with other places along the same line of railroad, and so promote to the prosperity of the place.

To the 17th interrogatory he answers: Relatively high rates to a locality tend to drive away capital and also population, and hinder prosperity. I know of a factory that moved from Marietta to Atlanta on the same line of the same railroad it was already on because of the big difference in freight rates in favor of Atlanta and against Marietta. A man who wanted to build a factory of any kind would not be apt to go to a place where there were high freight rates if he could find a place where the rate was very much lower. It is this way with Marietta and Atlanta; one has a high rate, the other a low rate, and it has caused a great many of the citizens of Marietta to move to Atlanta to do business, or to live here and do business in Atlanta.

To the 18th interrogatory he answers: I think of nothing else at present that will be of benefit to the parties at issue.

H. C. DOBBS.

I, George D. Anderson, of Marietta, Ga., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the said witnesses, to wit, W. L. Sessions, D. N. Anderson, J. P. Legg, and H. C. Dobbs, and after having duly sworn them to speak the truth, the whole truth and nothing but the truth, took down their answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by each of said witnesses. This the 2nd day of October, 1897.

GEO. D. ANDERSON, *Commissioner.*

[Indorsements on envelope.]

To O. C. Fuller, esq., clerk of the circuit court of the United States for the northern district of Georgia, Atlanta, Georgia.

Atlanta, Ga. Received by due course of mails, this 5 day of Oct., 1897. Amos Fox, P. M.

Received from the hands of the postmaster at Atlanta, Ga., and filed this 5 day Oct., 1897. O. C. Fuller, clerk.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

Interrogatories in the above-entitled cause on behalf of the complainant therein to be exhibited to Jesse M. Smith, of Washington, D. C.

Interrogatory No. 1. What is your name, residence and occupation?

Interrogatory No. 2. If you say you are auditor of the Interstate Commerce Commission, state how long you have occupied that position and what, if any, was your previous position with the Commission and how long you occupied that?

Interrogatory No. 3. In what business were you engaged before entering into the service of the Commission? How long were you so engaged and in what part of the country?

Interrogatory No. 4. Are schedules of rates, fares, and charges applying on interstate traffic required to be filed by carriers with the Interstate Commerce Commission? Are they not filed in the office of the auditor of the Commission, and is it not one of your duties as auditor to examine such tariffs?

Interrogatory No. 5. From your examination of such schedules of rates, fares, and charges, in what section of the United States does the practice of making the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, prevail to the greatest extent?

Interrogatory No. 6. If you say that this practice prevails to the greatest extent in the territory east of the Mississippi River and
130 south of the Ohio and Potomac rivers, state whether or not it is the rule in that territory in cases of transportation from points outside that territory through shorter distance local points to longer distance competitive points in that territory.

Interrogatory No. 7. How long has this practice existed in that territory? Was it or not in existence in the year 1887, when the act to regulate commerce became a law and prior thereto?

Interrogatory No. 8. Does this practice exist to any considerable extent in eastern or trunk line territory?

Interrogatory No. 9. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever to your personal knowledge been made in the territory east of the Mississippi River and south of the Ohio and Potomac rivers, except in cases of competition in transportation to the longer distant point? In other words, so far as your personal knowledge extends, has not competition in transportation been the sole ground or excuse for such greater charge?

Interrogatory No. 10. Under what classification are the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth,

Maretta and Atlanta, made? What is the minimum carload weight prescribed in that classification?

Interrogatory No. 11. Give a tabular statement showing the class rates that were in force in 1892, and that are now in force from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta and Atlanta, and showing the excess of the rates to Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta, on each class over the rates to Atlanta.

Interrogatory No. 12. Give a tabular statement showing the excess of the first-class rates to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, over the class rates to Atlanta per minimum carload.

131 Interrogatory No. 13. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for Complainant.

Cross-examination.
Cross-examination waived.

ED. BAXTER,
Counsel for Defendants.

Stipulation as to depositions of Jesse M. Smith.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

In the above-entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the deposition of the following-named witness for the complainant, to wit, Jesse M. Smith, of Washington, D. C., may be taken on the foregoing and annexed direct and cross interrogatories, and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency. All formal objections are waived. It is further stipulated and agreed that Eugene L. Gaddess, of Washington, D. C., may act as commissioner in taking said deposition. The issuance of commission to him and formal caption and certificate by him are waived.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.

ED. BAXTER,
Counsel for Defendants.

Filing: Filed in clerk's office 27 Aug., 1897. O. C. Fuller, clerk, by J. D. Steward, deputy.

132 *Answers of Jesse M. Smith.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al.
In equity, No. 524.

Depositions of Jesse M. Smith, a witness for the complainant in the above-entitled cause.

The said witness, Jesse M. Smith, having been duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

Answer to interrogatory No. 1: My name is Jesse M. Smith, Washington, D. C., and I am auditor of the Interstate Commerce Commission.

Answer to interrogatory No. 2: I have occupied that position since July 1, 1895: from January 1, 1888, to July 1, 1895, I was assistant auditor of the Commission.

Answer to interrogatory No. 3: I was engaged in railroad work for about fourteen years prior to entering the service of the Commission, most of the time in the general freight department of the Louisville & Nashville Railroad, at Louisville, Ky., and Montgomery, Ala.

Answer to interrogatory No. 4: Common carriers are required to file with the Commission all schedules of rates, fares, and charges applying on interstate traffic. All of such schedules are placed on file in the office of the auditor of the Commission, and it is one of the duties of the auditor, with the assistance of the clerical force in his charge, to examine, as far as practicable, all schedules of rates, fares, and charges filed in compliance with section six of the act to regulate commerce, for the purpose of determining whether such schedules are in accordance with the requirements of the law and the orders of the Commission.

133 Answer to interrogatory No. 5: From the large number of tariffs examined since the beginning of my service with the Commission, applying in all sections of the country, I am of the opinion that the practice of making the greater charge for the shorter than for the longer haul, over the same line in the same direction, the shorter being included in the longer, prevails to the greatest extent in the territory east of the Mississippi River and south of the Ohio and Potomac rivers.

Answer to interrogatory No. 6: I am of the opinion that the practice referred to prevails as a rule in cases of transportation from points outside that territory through shorter distance local points to longer distance competitive points in that territory, though there are, no doubt, some exceptions.

Answer to interrogatory No. 7: To the best of my recollection this practice has existed in that territory to a greater or less extent since the beginning of my railroad service. It was in existence in the year 1887 and, as above indicated, prior thereto.

Answer to interrogatory No. 8: This practice does not prevail to any considerable extent in the territory east of the Mississippi River and north of the Ohio and Potomac rivers.

Answer to interrogatory No 9: I have no personal knowledge of any case where the greater charge for the shorter than for the longer haul, over the same line in the same direction, the shorter being included in the longer, has been made in the territory described, except in cases where competition in transportation existed at the longer distance point. I believe the lower charge to the longer distance point has, in practically all cases, been made on the ground of competition in transportation to such longer-distance point, either direct competition in transportation from and to the same points, or competition with carriers operating from other markets to same point of destination.

Answer to interrogatory No. 10: The rate from Cincinnati, Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta, Ga., are subject to the Southern freight classification. This classification provides that unless otherwise specified in the classification
the minimum carload weight of all articles loaded in cars 36 feet in
134 length or less shall be 24,000 pounds, or twelve tons when the rate
applies per net or gross ton. For cars over 36 feet in length the minimum carload weights are provided in proportion to length of the car. Special minimum carload weights are provided in the classification for quite a large number of articles, the lowest being 10,000 pounds.

Answer to interrogatory No. 11: The class rates in force in 1892, also the present rates, from Cincinnati, Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta, Ga., are shown in the following table.

Class rates from Cincinnati, Ohio, to points named below.

[In cents per hundred pounds.]

	Classes.												Per bbl.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga.:													
1892	109	95	84	71	59	44	34	40	32	27½	53	57	56
1897	109	95	84	71	59	44	34	40	32	27½	53	57	56
Adairsville, Ga.:													
1892	112	98	86	73	60	45	35	41	32½	28	54	59	57
1897	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston, Ga.:													
1892	115	101	88	75	61	46	36	42	31½	27	55	61	55
1897	115	101	88	75	61	46	36	42	33	28	55	61	58
Cartersville, Ga.:													
1892	118	103	90	76	62	47	37	43	34	29	56	62	59½
1897	118	103	90	76	62	47	37	43	33½	28½	56	62	59½
Acworth, Ga.:													
1892	124	107	94	78	64	49	39	45	35	30	58	64	61
1897	124	107	94	78	64	49	39	45	34	29½	58	64	60½
Marietta, Ga.:													
1892	127	109	96	79	65	50	38	45	35	30	58	65	62
1897	127	109	96	79	65	50	38	45	35	30	58	65	62
Atlanta, Ga.:													
1892	107	92	81	68	56	46	28	35	28	24	48	53	48
1897	107	92	81	68	56	46	28	35	28	24	48	53	48

135 The rates from Cincinnati, Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta are higher than the rates to Atlanta, as follows:

[In cents per hundred pounds.]

	Classes.											
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.
Calhoun	2	3	3	3	3	...	6	5	4	5	5	4	8
Adairsville	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston	8	9	7	7	5	....	8	7	5	4	7	8	10
Cartersville	11	11	9	8	6	1	9	8	5½	4½	8	9	12½
Acworth	17	15	13	10	8	3	11	10	6	5½	10	11	15½
Marietta	20	17	15	11	9	4	10	12	7	6	10	12	14

Answer to interrogatory No. 12: The excess of the rate on the first six classes from Cincinnati, Ohio, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Ga., over the rates on same classes from Cincinnati to Atlanta, Ga., are, in dollars and cents, per carload of 24,000 pounds, as follows:

	Classes.					
	1.	2.	3.	4.	5.	6.
Calhoun	$4.80	$7.20	$7.20	$7.20	$7.20	.....
Adairsville	12.00	14.40	12.00	12.00	9.60	.....
Kingston	19.20	21.60	16.80	16.80	12.00	.....
Cartersville	26.40	26.40	21.60	19.20	14.40	$2.40
Acworth	40.80	36.00	31.20	24.00	19.20	7.20
Marietta	48.00	40.80	36.00	26.40	21.60	9.60

Answer to interrogatory No. 13: I know of nothing further that may be of benefit or advantage to the parties at issue in this cause, or either of them, or that is material to the subject of this examination.

JESSE M. SMITH.

I, Eugene L. Gaddess, of Washington, D. C., the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witness, Jesse M. Smith, and after having duly
136 sworn him to speak the truth, the whole truth, and nothing but the truth, took down his answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by said witnesses. This the 26th day of August, 1897.

EUGENE L. GADDESS,
Commissioner.

[Endorsed on envelope.]

To O. C. Fuller, esq., clerk of U. S. circuit court for the northern district of Georgia, Atlanta, Ga.

Registered August 26, 1897, Washington, D. C., Station C. No. 2092. Atlanta, Ga. Received by due course of mails this 28 day of Aug., 1897. Amos Fox, P. M.

Received this package from the hands of Amos Fox, P. M., at Atlanta, Ga., & filed Aug. 28, 1897. O. C. Fuller, clerk. By Geo. S. Barnard, deputy clerk.

Interrogatories to Allen Foot.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al.
In equity, No. 524.

Interrogatories in the above-entitled cause on behalf of the complainant therein to be exhibited to Allen Foot.

Interrogatory No. 1. What is your name and residence, and what position, if any, do you hold under the State of Georgia?

Interrogatory No. 2. How long have you held such position? Have your duties as a member of the railroad commission of Georgia required you to study and made you familiar with the railroad situation in that State? Had your attention been called to the transportation question prior to your becoming a member of the Georgia Railroad Commission, and if so, how and for how long a time?

Interrogatory No. 3. Were the rates in force in 1892, and now in
137 force from Atlanta, Georgia, to the following stations on the Western & Atlantic road between Atlanta and Chattanooga, to wit: Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun .....established by the railroad commission of Georgia? Were the rates from Chattanooga..... in force in 1892, and now in force to those stations, established by the railroad commission of Georgia?

Interrogatory No. 4. Name the rates in force in 1892, and now in force, from Atlanta to those stations. Name the rates in force in 1892, and now in force, from Chattanooga to those stations.

Interrogatory No. 5. In establishing the rates named in the preceding interrogatory, did the railroad commission of Georgia take into consideration the fact that the expense to the carrier of the service of carriage on local hauls in less than carload lots is greater per ton per mile than on long through hauls?

Interrogatory No. 6. Has the railroad commission of Georgia any authority or does it attempt to exercise any authority in establishing the through rates on interstate commerce or any proportions of such rates?

Interrogatory No. 7. Is it your opinion that the prosperity of a road is promoted more by a system of rates which builds up business at local stations along its entire line, or by a system which discriminates against such local stations and tends to build up business at widely separated trade centers alone?

Interrogatory No. 8. Have the effects of the former or latter system of rate making referred to in the preceding interrogatory come under your observation on any roads in the State of Georgia or elsewhere? And if so, state fully what those effects were.

Interrogatory No. 9. Are the geographical positions of Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun and the character of the territory by which they are surrounded such that they are

capable of no further growth? What effect, if any, would the reduction of the rates from Cincinnati.....

138 to those points so as to make their rates not higher than the rates to Atlanta have on the prosperity and growth of those points?

Interrogatory No. 10. Will a reduction in the rates on all classes of goods from Cincinnati to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun..... so as to make their rates not higher than the rates for the haul through those points to Atlanta..... in your opinion increase or diminish the tonnage of traffic which will be hauled by the roads to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun?

Interrogatory No. 11. What effect, if any, do relatively low or preferential rates to a locality have in increasing the population of such locality and in inducing the investment of capital there, and in promoting the prosperity of such locality in other respects?

Interrogatory No. 12. What effect, if any, do relatively high rates to a locality or rates which discriminate against a locality have on its prosperity or progress in the respects named in the preceding interrogatory?

Interrogatory No. 13. State whether or not Atlanta or Chattanooga merchants compete for business or sell goods in the territory adjacent to and surrounding Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun.

Interrogatory No. 14. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

L. A. SHAVER,
Of Counsel for the Complainant.

Cross-examination:

Cross-examination waived.

ED. BAXTER,
Counsel for Defendants.

139 *Stipulation as to deposition of Allen Fort.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al.
} In equity, No. 524.

In the above-entitled cause it is stipulated and agreed by counsel for the complainant and by counsel for the defendants that the deposition of the following-named witness for the complainant, to wit, Allen Fort, of Atlanta, Ga., may be taken on the foregoing and annexed direct and cross-interrogatories and may be read in evidence on the hearing of said cause, subject to all exceptions as to relevancy and competency. All

formal objections are waived. It is further stipulated and agreed that J. D. Massey, of Atlanta, Ga., may act as commissioner in taking said deposition. The issuance of commission to him and formal caption and certificate by him are waived.

ED. BAXTER,
Counsel for the Defendants.

L. A. SHAVER,
Counsel for the Interstate Commerce Commission.

Filing: Filed in clerk's office 27 day of Aug., 1897. O. C. Fuller, clerk, by J. D. Steward, deputy.

Answers of Allen Fort.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

The witness, Allen Fort, having been first by me duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose as follows:

To interrogatory No. 1, witness answering says: That his name is Allen Fort; his residence at Americus, Georgia; that he is one of the railroad commissioners of Georgia; that he has held said position for about six years.

140 To interrogatory No. 2, witness answering says: That he has been railroad commissioner of Georgia since October 16th, 1891; that his duties as such railroad commissioner require him to study and become familiar with the railroad situation in Georgia; that prior to his accession to the commission he had given considerable thought to the transportation question; that as a member of the Georgia legislature during the years 1877, 1878, 1879, and 1880 it became his duty to investigate the subject in order that he might intelligently vote on pending legislation organizing the railroad commission of Georgia, and otherwise affecting railroad transportation in Georgia.

To interrogatory No. 3, witness answering says: The authorized rates in force in 1892, and rates now in force, from Atlanta to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun were and are those established by this commission.

To interrogatory No. 4, witness answering says: That the authorized rates in force from Atlanta to said stations in 1892, and authorized rates now in force from Atlanta to said stations, may be found on pages 114 and 115, in connection with distance table on page 145 of the twentieth report of the railroad commission of Georgia, said rates not having been changed since 1882. A copy of said report is made a part of this answer. As to rates from Chattanooga, that city not being in Georgia, this commission has no control over rates from same.

To interrogatory No. 5, witness answering says: They did.

To interrogatory No. 6, witness answering says: That they did not and do not.

To interrogatory No. 7, witness answering says: In my opinion, the prosperity of the roads is greatly promoted by a system of rates which build up business at local stations along their entire lines, and that their property is greatly injured by a system which discriminates against local stations and tends to build up business at widely separated "trade centers" alone. At the local stations, where the roads get the entire business, by granting just rates they would increase their tonnage from these stations, thereby securing an improved, permanent business, not competitive. Such a course would foster friendly relations between
141 the people and the roads, and in a number of ways benefit the roads and promote their prosperity.

To interrogatory No. 8, witness answering says: I have observed the effects of rate-making systems which build up business at local stations, and have found that the roads so doing were uniformly more prosperous and their business more reliable; while, on the other hand, roads pursuing the opposite policy of discriminating against their noncompetitive stations have not been prosperous. This kind of oppression has promoted the construction of competing lines, often where the legitimate trade did not warrant it.

To interrogatory No. 9, witness answering says: The geographical positions of Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun, and the territory by which they are surrounded, are such that they are capable of further growth; and if rates from Cincinnati were not higher to those points than rates to Atlanta from Cincinnati, in my opinion their prosperity and growth would be promoted.

To interrogatory No. 10, witness answering says: In my opinion a reduction in rates from Cincinnati to those stations, so as to make said rates not higher than rates charged for the haul through those points to Atlanta, would increase the tonnage of traffic hauled by the roads to said points.

To interrogatory No. 11, witness answering says: Relatively low and preferential rates to a particular locality, if such rates are stable, would tend to increase the population of such locality and induce the investment of capital there, and would promote the prosperity of such locality. It would build up manufacturing, cause jobbing houses to be established, and increase the trade of such locality by extending its territory.

To interrogatory No. 12, witness answering says: Relatively high rates to a locality, which discriminates against it, would have the opposite effect from that stated in the foregoing answer. The margin of profit is so small now in commercial transactions that a discriminating rate against a locality makes manufacturing and jobbing unprofitable; and a locality so discriminated against can not hold the trade in its own legitimate territory; but more favored localities secure the trade, and are
built up at the expense of the less favored.

142 To interrogatory No. 13, witness answering says: I presume that Atlanta merchants do compete for business and sell goods in the territory adjacent to and surrounding said stations; to what extent I am unable to say.

To interrogatory No. 14, witness answering says: Nothing else of benefit to the parties at issue in this case, or either of them, material to the subject-matter of this examination occurs to me at this time.

ALLEN FORT, *Deponent.*

I, J. D. Massey, of Atlanta, Georgia, the commissioner named in the stipulation attached to the interrogatories herein, do certify that I called before me the witness, to-wit, Allen Fort, and after having first sworn him to speak the truth, the whole truth, and nothing but the truth, took down his answers to said interrogatories, and that the foregoing pages contain a full, true, and correct report of the testimony given by said witness. I do certify further that the twentieth report of the railroad commission of Georgia herein inclosed is the same referred to by witness aforesaid, and by him made a part of his answer, as herein set out.

This 29th day of September, 1897.

J. D. MASSEY, *Commissioner.*

[Endorsed on envelope.]

To O. C. Fuller, esq., clerk of U. S. circuit court for the northern district of Georgia, Atlanta, Ga.

Received of J. D. Massey, com'r., this package, this 30 day of September, 1897.

O. C. Fuller, clerk.

143 [Extracts from 20th report railroad commission of Georgia.]

Standard freight tariff—Classes.

Distance.	Per 100 pounds.											Per bbl..	Per 100 lbs..	Per 100 lbs..
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.	H.
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
5	12	11	10	8	7	6	6	6	4½	3½	7	9	2½	8
10	16	14	13	10	9	8	8	8	5½	5	9	11½	3½	10
15	18	16	15	12	11	9	9	9	6	5½	11	12½	3½	12
20	20	18	16	14	12	10	10	10	7	6	12	14	5	14
25	22	20	18	16	13	11	11	11	7½	6½	13	15	5½	16
30	24	21	19	17	14	11	11	11	7½	6½	14	15	6	17
35	26	23	21	19	15	12	12	12	8	7½	15	16½	6½	19
40	27	24	22	20	16	12	12	12	8	7½	16	16½	6½	20
45	29	26	24	21	17	13	13	13	8½	8	17	17½	6½	21
50	**30**	**27**	**25**	**22**	**18**	**13**	**13**	**13**	**8½**	**8**	**18**	**17½**	**7**	**22**
55	32	29	26	23	19	14	14	14	9	8½	19	18	7	23
60	33	30	27	24	19	14	14	14	9	8½	19	18	7½	24
65	35	32	28	25	20	15	15	15	9½	9	20	19	7½	25
70	36	33	29	26	20	15	15	15	9½	9	20	19	7½	26
75	38	35	30	27	21	16	16	16	10	9½	21	20	7½	27
80	39	36	31	28	21	16	16	16	10	9½	21	20	7½	28
85	41	37	32	29	22	17	17	17	11	10	22	21½	7½	29
90	42	38	33	29	22	17	17	17	11	10	22	21½	8	29
95	44	39	34	30	23	18	18	18	11½	11	23	23	8	30
100	**45**	**40**	**35**	**30**	**23**	**18**	**18**	**18**	**11½**	**11**	**23**	**23**	**8½**	**30**
110	48	42	37	31	24	19	19	19	12	11	24	23	8½	31
120	51	44	39	32	25	20	20	20	13	12	25	24	8½	32
130	54	46	41	33	26	21	21	21	13	12	26	25	8½	33
140	57	48	43	34	27	22	22	22	13	13	27	26	9	34
150	**60**	**50**	**45**	**35**	**28**	**23**	**23**	**23**	**14**	**13**	**28**	**28**	**9**	**35**
160	62	52	46	36	29	24	24	24	14	13	29	29	9½	36
170	64	54	47	37	30	25	25	25	15	14	30	31	9½	37
180	66	56	48	38	31	26	26	26	15	14	31	31	9½	38
190	68	58	49	39	32	27	27	27	16	15	32	33	9½	39

144 (Extracts from 20th report railroad commission of Georgia—Continued.)

Standard freight tariff—Classes—Continued.

Distance.	Per 100 pounds.												Per 100 lbs.	Per 100 lbs.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.	H.
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
200	**70**	**60**	**50**	**40**	**32**	**27**	**27**	**27**	**16**	**15½**	**32**	**35**	**9¼**	**10**
210	71	62	51	41	33	28	28	28	17	16	33	34	9¼	10
220	72	64	52	42	33	28	28	28	17	16	33	34	10	10
230	73	66	53	43	34	**29**	29	29	18	17	34	36	10¼	10
240	74	68	54	44	34	29	29	29	18	17	34	36	10¼	10
250	**75**	**70**	**55**	**45**	**35**	**30**	**30**	**30**	**19**	**18**	**35**	**38**	**10½**	**10**
260	76	71	56	46	35	30	30	30	19	18	35	38	10½	10
270	77	71	56	46	36	31	31	31	20	19	36	40	10¾	10
280	78	72	57	47	36	32	32	32	20	19	36	40	10¾	10
290	79	72	57	47	37	32	32	32	21	19	37	42	10¾	10
300	**80**	**73**	**58**	**48**	**38**	**33**	**33**	**33**	**21**	**19**	**38**	**42**	**11**	**10**
310	81	73	58	48	38	33	33	33	21	19	38	42	11	10
320	82	74	59	49	39	34	34	34	21	20	39	42	11	10
330	83	74	59	49	39	34	34	34	22	20	39	44	11	10
340	84	74	59	49	39	34	34	34	22	20	39	44	11	10
350	**85**	**75**	**60**	**50**	**40**	**35**	**35**	**35**	**23**	**21**	**40**	**46**	**11**	**10**
360	85	75	60	50	40	35	35	35	23	21	40	46	11¼	10
370	85	75	60	50	40	35	35	35	23	21	40	46	11¼	10
380	88	76	61	51	41	36	36	36	25	23	41	50	11¼	10
390	88	76	61	51	41	36	36	36	25	23	41	50	11¼	10
400	**88**	**76**	**61**	**51**	**41**	**36**	**36**	**36**	**25**	**23**	**41**	**50**	**11½**	**10**
410	91	77	62	52	42	37	37	37	26	24	42	52	11½	10
420	91	77	62	52	42	37	37	37	26	24	42	52	11½	10
430	91	77	62	52	42	37	37	37	26	24	43	52	11¾	10
440	94	78	63	53	43	38	38	38	27	25	43	54	11¾	10
450	**94**	**78**	**63**	**53**	**43**	**38**	**38**	**38**	**27**	**25**	**43**	**54**	**11¾**	**10**
460	94	78	63	53	43	38	38	38	27	25	42	54	12	10

145 [Extracts from 20th Report Railroad Commission of Georgia—Continued.]

Standard freight tariff—Classes.

Distance.	Per 100 lbs.		Per ton.		Per carload.			Per 100 lbs.
	J.	K.	L.	M.	N.	O.	P.	R.
Miles.	*Cts.*	*Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*Cts.*
5	8	4	.35	.55	5.00	5.50	4.00	4
10	10	5	.50	.80	6.50	8.00	5.00	5
15	12	5½	.55	.85	7.50	9.50	6.00	5½
20	13	6	.60	.90	8.00	10.00	7.00	6
25	14	6⅝	.65	.95	9.00	11.00	8.00	6½
30	15	7	.70	1.00	10.00	11.00	8.00	7
35	16	7¼	.75	1.05	12.00	12.00	9.00	7½
40	17	8	.80	1.10	13.00	12.00	9.00	8
45	18	8	.85	1.15	14.00	13.00	10.00	8½
50	**19**	**8**	**.90**	**1.20**	**14.00**	**13.00**	**10.00**	**9**
55	20	8	.95	1.25	14.00	14.00	10.00	9
60	21	9	.95	1.30	14.50	14.00	11.00	10
65	22	9	1.00	1.35	15.50	15.00	11.00	10
70	22	9	1.00	1.40	16.00	15.00	11.00	11
75	23	9½	1.05	1.45	16.50	16.00	12.00	11
80	23	9½	1.10	1.50	17.00	16.00	12.00	12
85	24	9½	1.15	1.55	17.50	17.00	13.00	12
90	24	9½	1.15	1.60	18.00	17.00	13.00	13
95	25	10	1.20	1.65	19.00	17.00	14.00	14
100	**25**	**10**	**1.20**	**1.70**	**20.00**	**17.00**	**14.00**	**14**
110	26	10	1.25	1.80	21.00	18.00	14.00	15
120	27	10½	1.30	1.90	23.00	18.00	15.00	16
130	28	10½	1.35	2.00	24.00	19.00	16.00	17
140	29	11	1.40	2.10	25.00	19.00	16.00	18
150	**30**	**11**	**1.50**	**2.20**	**26.00**	**20.00**	**17.00**	**18**
160	31	12	1.60	2.25	27.00	20.00	17.00	19
170	32	12	1.70	2.30	28.00	21.00	18.00	19
180	33	12	1.80	2.35	29.00	21.00	19.00	20
190	34	13	1.90	2.40	29.50	22.00	19.00	20
200	**35**	**13**	**2.00**	**2.45**	**30.00**	**22.00**	**20.00**	**20**
210	36	13	2.10	2.50	31.00	23.00	20.00	21
220	37	14	2.20	2.55	31.50	23.00	21.00	21
230	38	14	2.30	2.65	32.00	23.00	21.00	21
240	39	14	2.40	2.65	33.00	24.00	22.00	22
250	**40**	**15**	**2.50**	**2.75**	**33.50**	**24.00**	**22.00**	**22**
260	41	15	2.60	2.75	34.00	24.00	22.00	22
270	42	15	2.70	2.85	34.50	25.00	23.00	22
280	43	16	2.80	2.85	35.00	25.00	23.00	23
290	44	16	2.90	2.95	36.00	25.00	24.00	23
300	**45**	**16**	**2.95**	**3.00**	**36.50**	**26.00**	**24.00**	**23**
310	46	17	3.05	3.10	37.00	26.00	24.00	23
320	47	17	3.05	3.20	38.00	26.00	24.00	24
330	48	17	3.15	3.30	38.50	27.00	25.00	24
340	49	17	3.15	3.40	39.00	27.00	25.00	24
350	**50**	**17**	**3.28**	**3.50**	**40.00**	**27.00**	**25.00**	**24**
360	51	17	3.28	3.50	40.00	27.00	25.00	24
370	52	17	3.28	3.50	40.00	27.00	25.00	24
380	53	18	3.41	3.60	41.00	29.00	27.00	26
390	54	18	3.41	3.60	42.00	29.00	27.00	26
400	**55**	**18**	**3.41**	**3.60**	**42.00**	**29.00**	**27.00**	**26**

146 [Extract from 20th Report Railroad Commission of Georgia—Continued.]

Standard freight tariff—Classes—Continued.

Distance.	Per 100 lbs.		Per ton.		Per carload.			Per 100 lbs.
	J.	K.	L.	M.	N.	O.	P.	R.
Miles.	*Cts.*	*Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*$ Cts.*	*Cts.*
410	**56**	**19**	**3.54**	**3.70**	44.00	31.00	29.00	28
420	57	19	3.54	3.70	44.00	31.00	29.00	28
430	58	19	3.54	3.70	44.00	31.00	29.00	28
440	59	20	3.67	3.80	46.00	33.00	31.00	30
450	**59**	**20**	**3.67**	**3.80**	**46.00**	**33.00**	**31.00**	**30**
460	60	20	3.67	3.80	46.00	33.00	31.00	30

UNION POINT AND WHITE PLAINS R. R.

Passenger, Class A, (three cents per mile).
Freight: Apply commissioners' standard tariff to all classes.

Distance table.

Union Point	0	Caldwell	5	Jarrells	12
Junction	2	Siloam	7	White Plains	14

WADLEY AND MT. VERNON RAILROAD COMPANY.

Passenger, Class B, (four cents per mile).
Freight: On classes 1, 2, 3, 4, 5, 6, A, B, E, H, and K, commissioners' standard tariff with 50 per cent added.
On Classes G, L, M, N, O, and R, commissioners' standard tariff with 20 per cent added.
On Classes C, D, F, J, and P, commissioners' standard tariff.
On rosin, Class K, less 20 per cent.

Distance table.

Wadley	0	Hods	17	Adrian	27
Pinetucky	6	Ethel	22	Ricksville	29
Kite	15	Odomville	25		

147 [Extracts from 20th report Railroad Commission of Georgia—Continued.]

WESTERN & ATLANTIC R. R.

Passenger, Class A (three cents per mile).
Freight: Apply standard tariff to all classes.

Distance table.

Atlanta	0
Bolton	7
Gilmore	10
Vining's	11
McIvor's	12
Smyrna	15
Marietta	20
Elizabeth	22
Big Shanty	29
Acworth	35
Ruby	37
Allatoona	40
Bartow Iron Works	42
Stegall's	43
Cartersville	48
Roger's	51
Cass	53
Kingston	59

Cement 60
Hall's 64
Adairsville 69
McDaniel's 75
Calhoun 78
Resaca 84
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Tunnell Hill 107
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Graysville 121
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CINCINNATI JC., TENN 132
CHATTANOOGA, TENN 138

148 In the circuit court of the United States for the northern district of Georgia, at Atlanta.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

Frank Lyon, stenographer, 1317 F St. NW., Washington, D. C.

In the circuit court of the United States for the northern district of Georgia, at Atlanta, Ga.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD Company et al. } In equity, No. 524.

In this case it is stipulated and agreed by counsel for complainant and counsel for defendants that Frank Lyon, stenographer, shall act as special examiner, with all the powers of such, to take the depositions of such witnesses in this case as may be produced before him by defendants.

It is further stipulated and agreed that he shall take the testimony of such witnesses in shorthand and afterwards reduce the same to typewriting and certify that his report of the testimony is full, true, and correct. The signatures of the witnesses to their testimony and all formal caption and certificate are expressly waived.

June 22nd, 1897.

(Signed)

L. A. SHAVER,
Counsel for Complainant.

ED. BAXTER,
Counsel for Defendants.

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	Direct.	Cross.	Re-d.	Re-c.	Re-re-d.
Biles, G. P.	179	189	203	204	205
Brown, J. M.	70	95	109	109	.....
Culp, J. H.	33	42	60	.....	.....
Knox, G. R.	148	165	.....	.....	.....
Lutz, R. E.	119	123	.....	.....	.....
Thompson, J. R.	62	65	67	68	69
Winburn, W. A.	131	137	.....	.....	.....
Van den Berg, Y.	1	12	29	31	.....

149 EXHIBITS.

Exhibit No. 1. Filed by J. M. Culp, p. 61. Articles of agreement of the Southeastern Freight Association.

Exhibit No. 2. Filed by J. R. Thompson, p. 63. Statement of tonnage from the Eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia to Atlanta, Ga., during the year ended March 31st, 1893.

Exhibit No. 3. Filed by J. R. Thompson, p. 63. Classified statement of tonnage from points on and beyond the Ohio and Mississippi rivers, and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield, and Riverton, Ala., to Atlanta, Ga., during the year ended March 31st, 1893.

Exhibit No. 4. Filed by J. R. Thompson, p. 65. Articles of agreement of Southern States Freight Association.

Exhibit No. 5. Filed by J. R. Thompson, p. 65. Articles of agreement of the Southern Railway & Steamship Association.

Exhibit No. 6. Filed by J. M. Brown, p. 72. Pages 64 to 67, 124, 126 to 130 from 23rd annual report of the R. R. Com. of Ga., from October 15, 1894, to October 15, 1895.

Exhibit No. 7. Filed by G. R. Knox, p. 162. Comparatives statement of receipts and disbursements on the Western & Atlantic Railroad.

Case No. 40.

FORT MONROE, VA., *June 22nd, 1897.*

Y. VAN DEN BURG, a witness called by and on behalf of the defendant, having been duly sworn, testified as follows:

By Mr. BAXTER:

1. State your name, age, residence, and occupation.

A. Y. van den Burg; 41 years; reside in Louisville, Ky.; traffic manager of the Louisville & Nashville Railroad.

2. Q. How long have you been connected with the traffic departments of railroads in the United States?

A. Since 1880.

3. Q. In this case the Interstate Commerce Commission ordered the defendant to desist from charging for the transportation of like kind of property from Cincinnati and other Ohio River points to Calhoun,
150 Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Atlanta. The enforcement of its order

may compel the following reductions in cents per hundred pounds in rates from Cincinnati and other Ohio River points to the following stations:

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, etc	2	3	3	3x	3	....	6	5	4	3	5	4	8
Adairsville	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston	8	9	7	7	5	....	8	7	3½	3	7	8	7
Cartersville	11	11	9	8	6	1	9	8	6	5	8	9	11½
Acworth	17	15	13	10	8	3	11	10	7	6	10	11	13
Marietta	20	17	15	11	9	4	10	10	7	6	8	12	14

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to those stations so as to make up for any loss of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. The effect of the reductions would be loss of revenue to the carriers to the full extent of the reductions, and it would not be offset to any degree by the increase of tariff.

The two extreme points mentioned—Calhoun on the one side and Marietta on the other—are 58 miles apart. There are stations intermediate other than those mentioned in the complaint—namely, McDaniels, Cass, Emerson, and Kenesaw. The distance between these points varies from three to eight miles. Reductions to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta involve reductions to McDaniels, Cass, Emerson, and Kenesaw.

With a reduction of these rates, the rates to points on other lines running parallel with the Western & Atlantic road—namely, the Southern Railway on the one side and the Atlantic, Knoxville & Norfolk on the other, would be correspondingly reduced. So that the difference as between one Western & Atlantic point and another Western & Atlantic point, and between any Western & Atlantic point and points opposite on parallel lines, would remain the same. *The* other words, each point would hold the trade it now has. They simply supply a local demand and a local consumption, and the local demand can not be increased by reduction in rates.

4. Q. Rates and distances from Cincinnati to the following stations on the Western & Atlantic Railroad in December, 1892, were as follows:

151 From Cincinnati to—	Mi.	1.	2.	3.	4.	4.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	396	109	95	84	71	59	44	34	40	32	27½	53	57	56
Adairsville	405	112	98	86	73	60	45	35	41	32½	28	54	50	57
Kingston	415	115	101	88	75	61	46	36	42	31½	27	55	61	55
Cartersville	426	118	103	90	76	62	47	37	43	34	29	56	62	59½
Acworth	459	124	107	94	78	64	49	39	45	35	30	58	64	61
Marietta	453	127	109	96	79	65	50	38	45	35	30	56	65	62

State whether or not in your opinion said rates are just and reasonable or unjust and unreasonable, and give your reasons for any opinion you may express.

A. I consider the rates just and reasonable for the reason that they are fixed upon the lowest obtainable combination, Chattanooga, Rome, or Atlanta governing, as the case may be. In other words, the traffic to these local stations has the benefit of whatever competition may have compelled the present adjustment of rates to Atlanta, Rome, and Chattanooga. These rates are also lower than prevail in some of the other sections of the country and lower than can be obtained by any other means of transportation.

5. Q. State what transportation lines actually and actively compete for the transportation of freight from Cincinnati to Chattanooga.

A. The Cincinnati Southern road, the Louisville & Nashville road, by two different routes, the Baltimore & Ohio Southwestern in connection with its lines via Louisville and thence the Illinois Central and Memphis and the Charleston, from Memphis, the Ohio and Mississippi River boats in connection with the Tennessee River steamers.

6. Q. The distance from Cincinnati to Chattanooga is 356 miles and the rates from Cincinnati to Chattanooga are as follows:

Class.												
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
76	65	57	47	40	30	20	26	23	19	34	33	38

State whether in your opinion said rates are just and reason-
152 able or unjust and unreasonable, and give your reasons for any opinion you may express.

A. I consider the rates to Chattanooga just and reasonable. They have been arrived at by traffic experts after years of experience and have been effective since August, 1884. Under that adjustment, Cincinnati has been able to sell its wares and products in Chattanooga, and Chattanooga has built up an important distributing trade.

7. Q. Name the transportation lines, all rail or all water, or part rail and part water, that actively and actually competed in 1892 and now compete as well as from Ohio River points as from other sections of the country for transportation to Atlanta of freight classified as 1/2, 3/4, 5, 6, A, B, C, D, E, H, F classes.

A. The following lines actually and actively compete for traffic from Cincinnati and points enumerated for transportation of all classes of freight and commodities to Atlanta:

The Cincinnati Southern by three different routes; the Louisville and Nashville by five different routes; the Baltimore & Ohio Southwestern by five different routes.

From Louisville: The Louisville & Nashville by three different routes; the Southern Railway by two different routes; the Illinois Central by five different routes.

From Evansville and Henderson: The Louisville & Nashville by three different routes; the Ohio Valley, in connection with the Illinois Central, via five different routes.

From Paducah: The Nashville, Chattanooga & St. Louis via three different routes; the Illinois Central via five different routes.

From Cairo: The Nashville, Chattanooga & St. Louis via three dif-

ferent routes; the Illinois Central via six different routes; the Mobile and Ohio via eight different routes.

As to lines actually and actively competing to Atlanta on all classes of commodities from sections other than the Ohio River crossings, they are too numerous to specify. However, there are:

153 The Baltimore & Ohio Southwestern, the Cincinnati and Muscogee, the Cincinnati and Westward, the Cincinnati, Georgetown and Portsmouth, the Cincinnati, Hamilton and Dawson, the Cincinnati, Jackson and Mackinaw, the Cincinnati, Lebanon & Northern, the Cincinnati Northwestern, the Cincinnati, Portsmouth & Virginia, the Cleveland, Cincinnati, Chicago and St. Louis, the Erie Railroad, the Pennsylvania Railroad.

These are terminal lines at Cincinnati, reaching that point from the north, east, or west.

The Chicago, Indianapolis & Louisville; the Baltimore & Ohio Southwestern; the Cleveland, Cincinnati, Chicago & St. Louis; the Pennsylvania Railroad; the Louisville, Evansville & St. Louis; the Louisville, Henderson and St. Louis.

These are terminal lines at Louisville, reaching that point from the north, east, or west.

The Louisville & Nashville; the Evansville and Terre Haute; the Louisville, Evansville & St. Louis; the Peoria, Decatur and Evansville.

These are terminal lines at Evansville, with the bridge transfer at Henderson, reaching those points from the north or west.

The Illinois Central is the terminal line at Paducah from the north, west, or east.

The Cleveland, Cincinnati, Chicago & St. Louis; the Illinois Central; the Mobile and Ohio; the St. Louis, Iron Mountain and Southern; the St. Louis and Southwestern.

These are terminal lines at Cairo, reaching that point from the north, east, or west.

All these lines with terminals at Cincinnati, Louisville, Evansville, Henderson, Paducah and Cairo, compete in connection with lines running south from these Ohio River crossings, for all Atlantic traffic originating on their lines or through their connections, to the territory east and north of them, and west of them as far as the Pacific coast.

8. Q. State whether or not the Louisville and Nashville Railroad Company and its connections actually and actively compete for the carriage of freight of various classes to Atlanta; if so, from what cities?

A. The Louisville & Nashville Railroad and its connections actually and actively compete for the carriage of freight of various classes to Atlanta, and from all territories described in the preceding answer. Likewise do we compete direct or through our connections from cities or territories located west of the Louisville & Nashville road, and south of the Ohio River.

9. Q. State whether or not your railroad or its connections have agents at said cities to solicit freight for transportation to Atlanta?

A. The Louisville & Nashville Railroad or its connections
154 have agents at all the cities and territories previously described to solicit freight for Atlanta.

10. Q. State whether or not your railroad has, or its connections, advertised at said cities for the transportation of freight to Atlanta?

A. The Louisville & Nashville Railroad or its connections, through the means of tariffs and other publications, advertised for freight from cities and territories mentioned to Atlanta.

11. Q. Explain the basis of making rates from Boston, New York, Philadelphia, and Baltimore to Atlanta. Are the rates which are fixed by the Georgia Railroad Commission from the Georgia sea coast to Atlanta taken into consideration?

A. In making the rates from the Eastern seaboard cities to Atlanta, the coast-wise competition by steam and sailing vessels to Charleston, Savannah and Brunswick, added to the rates from the ports, are a factor.

12. Q. State whether the rates on freight from Ohio River points to Atlanta are controlled to any, and if so, to what, extent by competition?

A. Yes, sir; they are entirely controlled by competition, both as between carriers from the same markets, as well as carriers from other markets.

13. Q. State whether the number of tons carried one mile or the number of tons carried of freight earning revenue, or the average receipts per ton per mile, or the estimated cost of carrying one ton one mile, can be used either separately or jointly as the standard in railroad rate making, and state your reasons for it?

A. The items can not be used as a standard for railroad rate making in fixing an adjustment of rates between any two or more points; rates have to be made on all classes of freight so as to cover anything that might be offered for transportation, and not knowing the tonnage that will move under each class or the aggregate tonnage that will be moved under all classes, or the percentage the aggregate tonnage stands to the total tonnage of the road, it is impossible to consider the rate per ton per mile or the average receipts per ton per mile in fixing rates between any two or more points; and independent of this competition compels the carrier frequently to fix rates without regard to any one or more of the specific items of your inquiry.

14. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which transportation of freight is conducted?

A. The competition between carriers, whether by rail or by
155 water, substantially affects the circumstances and conditions under which transportation is effected. As an illustration, the short line from Cincinnati to Atlanta is 475 miles. The route by the Louisville & Nashville Railroad from Cincinnati to Atlanta, via Nashville & Chattanooga, is 684 miles. The route by the Baltimore & Ohio Southwestern in connection with the Illinois Central, via Memphis and the Illinois Central Railroad, is 833 miles. In other words, the Louisville & Nashville road has to take the transportation from Cincinnati to Atlanta for its 684 miles, and the Baltimore & Ohio Southwestern, in connection with the Illinois Central, for its 883 miles at no greater gross revenue than realized by the Cincinnati Southern for its 476 miles.

15. Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta as there is at Atlanta.

A. Calhoun, Adairsville, Kingston, Cartersville, &c., are reached only

by the Western & Atlantic Railroad. Still, so far as the carriage of freight is concerned up to the base point, Atlanta, Rome, or Chattanooga, the traffic is competitive, whether destined to these local stations as when consigned to the base point proper.

16. Q. State whether the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad are under any common control or management; and if so, what is it?

A. Those roads are not under any common control or management.

17. Q. I believe it is true that the Louisville & Nashville Railroad has a majority of the stock of the Nashville, Chattanooga & St. Louis Railway?

A. I have so understood, but I do not know that it has of my own knowledge.

18. Q. It is also true that the Nashville, Chattanooga & St. Louis leases the Western & Atlantic Railroad?

A. Yes, sir.

19. Q. But otherwise than that the Louisville & Nashville owns the majority of the stock of the Nashville, Chattanooga & St. Louis Railway, and that the Nashville, Chattanooga & St. Louis Railway leases the Western and Atlantic Railroad, there is no common control or management?

A. No, sir; the Nashville, Chattanooga & St. Louis Railroad is as active a competitor as we have.

Cross-examination by Mr. SHAVER:

1. Q. You stated in answer to the first direct interrogatory
156 that if the rates to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta were reduced as named in said interrogatory, that it would be an absolute loss of revenue to the road?

A. Yes, sir.

2. Q. And you also stated that a reduction in the rates to these points would not increase the tonnage of traffic transported to those points and thereby increase the revenue of the road?

A. Yes, sir.

3. Q. You gave as one reason for this that the rates from points on parallel lines would have to be correspondingly reduced. Suppose the rates to these points were reduced, named in the interrogatory, and the Atlanta rate remained the same, would that not include the position of these points as related to Atlanta?

A. Now, Mr. Shaver, do you mean reduce the Western & Atlantic points without reducing the rates on the parallel lines?

4. Q. No; without reducing the rate to Atlanta.

A. Without reducing the rate to Atlanta, unquestionably, reducing the rate to Cincinnati to the Western & Atlanta points would be injurious to Atlanta.

5. Q. Would it not benefit these points?

A. No, sir. There is just so much consumed in the communities immediately around each of these local stations that you have mentioned. A reduction in the rate would not draw to these points an additional barrel of sugar or an additional barrel of meat or any other article that is consumed by the communities at those points.

6. Q. How would the reductions, then, of these rates to intermediate points injure Atlanta without reducing the Atlanta rate, leaving that the same?

A. It would injure Atlanta in that the part of the traffic now drawn from Atlanta, that being a distributing point, for points on the Western & Atlantic road, for a portion of the Western & Atlantic road might go somewhere else.

7. Q. Under the present system of relatively higher rates to these intermediate points that to Atlanta, cannot Atlanta merchants compete with the merchants at these intermediate points and sell goods at those points and in the surrounding territory?

A. Atlanta merchants sell to merchants at those points.

8. Q. If the rates from Cincinnati to these intermediate points were no higher than the Atlanta rates, would the Atlanta merchants then sell goods at these points in competition with merchants residing there?

A. I question that. I think the large amount of the traffic
157 would be diverted to Cincinnati or other points against Atlanta.

9. Q. Do not these merchants at these intermediate points now largely get their goods from Cincinnati?

A. I fancy they do to some extent.

10. Q. Do not rates have an effect upon the prosperity—business prosperity of a locality—that is, whether they be high or low?

A. It is possible to make rates that will absolutely prevent the development of a section of country. There is no doubt about that.

11. Q. If there are two localities, one having relatively lower rates than another, would not that induce the establishment of industrial enterprises at the place having the relatively lower rate rather than at the place having the relatively higher rate, other things being equal?

A. You speak of industries—you mean manufacturing plants?

12. Q. Yes.

A. That depends entirely upon what sort of a factory it is; what raw material it would use; where it would draw its raw material from.

13. Q. If the rates on that raw material was relatively lower from one point than to another, would not the factory be more like to go to the one which had the lower rate?

A. Not necessarily. It would depend on the rates on the product out. I fancy if a factory has the selection of two points, the rates on the raw material in the one point and the rates on the product out being lower than the rates on the raw material in the other point and the product out, that it would naturally locate where the cheapest rates are. That depends largely, of course, as to what market they have to supply.

13. Q. Cheap rates then have an influence in building up a locality, have they not?

A. They have where you make rates on the articles that are manufactured. It has not when you make rates simply on the consumption of a community—the class of freight involved in this case. As I understand it, it simply covers the consumption of articles.

14. Q. Atlanta merchants trade in the territories intermediate between Chattanooga and Atlanta, do they not?

A. Yes, sir; to some extent, I think.

15. Q. Is there not another road leading to Kingston besides the Western & Atlantic?

A. No, sir.

16. Q. Is there not a railroad running to Rome, Georgia?

158 A. If there is, it is a branch of the Western & Atlantic Road. The Rome Railroad operated by the Western & Atlantic Road runs between Kingston and Rome.

17. Q. Does not that road make connection at Rome with other roads?

A. Yes, sir; it connects with the roads leading from Rome.

18. Q. To what points—roads leading from Rome to what points?

A. Pretty near the whole of the United States. The initial lines at Rome are the Chattanooga, Rome and Columbus, the Southern Railway and the Western & Atlantic Railroad.

19. Q. Those roads connect, do they not, with lines in every direction almost?

A. Yes, sir.

20. Q. Is there not another road reaching Cartersville besides the Western & Atlantic?

A. The East & West road, 117 miles long, crosses the Western & Atlantic road at Cartersville.

21. Q. Goods from Cincinnati destined to Atlanta may be hauled as far as Chattanooga over the Cincinnati, New Orleans & Texas Pacific road, or over the Louisville & Nashville, may they not?

A. Yes, sir.

22. Q. The former is the short line, is it not—The Cincinnati, New Orleans & Texas Pacific?

A. Yes, sir.

23. Q. Is it not almost the invariable rule that the short lines make the rates?

A. It is, sir.

24. Q. You stated in your direct examination that the average receipts per ton per mile and the estimated cost of carrying per ton per mile of freight in general furnished no standard from which could be ascertained what is a reasonable rate in a given case?

A. No, sir; I stated that was not a standard in the making of rates.

25. Q. Are they standards in determining the reasonableness of a rate in a given case?

A. They may be a factor in some cases to judge it by, but they would not be a standard.

26. Q. How long have the roads been in the habit of making out these data—the average per ton per mile, the estimated cost of carrying one ton per mile?

A. For as long as I have been connected with the railroads.

159 27. Q. You have been connected with them since 1880?

A. Yes, sir.

28. Q. What use do the roads make of these data?

A. It gives them a chance to know what the average rate per ton per mile is that they realize on their entire traffic that may be used for other purposes.

29. Q. These data are the result of calculation, are they not?

A. Yes, sir.

30. Q. In your direct examination you were asked and gave the rates from the different classes from Cincinnati to Calhoun, Adairsville, Kings-

ton, Cartersville, Acworth, and Marietta. Are not the rates from Cincinnati through these intermediate points to Atlanta as follows:

(2)

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
107	92	81	68	56	46	28	35	28	24	48	53	48

A. Yes, sir.

31. Q. Is not the distance from Cincinnati to Atlanta by the line via the Cincinnati, New Orleans & Texas Pacific Railway and the Eastern & Atlantic through these intermediate points 474 miles?

A. I have got it 475.

32. Q. Do these rates from Cincinnati to Atlanta pay operating expenses?

A. They do, sir.

33. Q. Do they pay anything over and above operating expenses?

A. I think so.

34. Q. Are not the rates from Atlanta to Cincinnati fixed by agreement between the lines to that point?

A. I think they were originally so fixed.

35. Q. Atlanta is in the territory which was formerly subject to what is called the jurisdiction of the Southern Railway and Steamship Association, is it not?

A. Yes, sir.

36. Q. Did not that association determine the true rates to all competitive points in that Southern territory?

A. That the association was the means through which the rates were determined.

37. Q. By the carriers members of it?

A. Yes, sir.

38. Q. How do you determine whether a given rate is reasonable or unreasonable?

160 A. If a point under any prevailing adjustment of rates is able to hold and develop its trade, I regard such an adjustment of rates as reasonable.

39. Q. Is a rate reasonable which does not yield the carrier a proper remuneration over and above the cost of service?

A. I do not believe carriers make rates below the cost of transportation. I would consider such a rate as unreasonably low.

40. Q. It would not, then, be a reasonable rate unless it yielded a proper remuneration over and above the cost of service?

A. It would be an unreasonably low rate.

41. Q. Is not, therefore, the expense of cost of the service an element to be considered in determining the reasonableness in and of itself of a given rate?

A. I presume, when you get rates down to a certain point, that element would be considered a factor.

42. Q. Does not the cost of the expense of the service of transportation depend largely, or to some extent, on the length of the haul, other things being equal?

A. Distance is a factor, but not a controlling one.

43. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Not necessarily. Through traffic for the longer haul is handled in less time than local traffic for the shorter haul.

44. Q. I stated, other things being equal—that is, the same rate of speed for the long haul as for the short haul—is not the consumption of time greater the greater the distance?

A. The consumption of time is a factor in the expense, of course, like everything else is.

45. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. It is one of the items of expense.

46. Q. The answer to that is yes, I suppose?

A. Yes, sir.

47. Q. Is not the wear and tear on locomotives, cars, tracks, railroad, etc., greater the greater the length of the haul?

A. That is another item of expense.

48. Q. Is not the cost of keeping the road in repair or in good condition greater the greater the length of the road, other things being equal?

A. Yes, sir; the longer the road the larger the total expenses of maintaining the road.

49. Q. Does it not require more locomotives, cars, and more crews for the running of trains on a long road than on a short one, as a general rule?

161 A. That depends largely on the amount of the traffic you have got to handle.

50. Q. Other things being equal, does not distance add to the cost of building the road, and are not, therefore, the fixed charges, such as interest on the capital invested, greater, the greater the length of the road?

A. It costs more to build a five-hundred-mile road than a fifty-mile road, and the fixed charges on a 500-mile road would be greater than on the 50-mile road, although the charges would not be greater per mile.

51. Q. Is not the service more valuable to the shipper the greater the length of the haul? In other words, will not a haul of 100 miles give a shipper markets for goods or produce which he will not have for fifty miles?

A. If you mean by that that a hundred-mile road to a shipper at Nashville for the distribution of his merchandise is of more value than a road 50 miles in length, for instance, that is true.

52. Q. Are not the through rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Merietta made up of the rate from Cincinnati to Chattanooga plus the local rate from Chattanooga to those points?

A. To Calhoun, Adairsville, and Cartersville the rates are made on the Chattanooga combination; likewise, to Kingston, except on class D, which is made on the Rome combination; likewise to Acworth, except as to classes C, D, & F, which are made on the Rome combination; likewise to Marietta, except class A, B, C, & D, which are made on the Atlanta combination.

53. Q. Is not traffic transported from Cincinnati to Chattanooga, to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through bills of lading issued at Cincinnati by the initial carrier?

A. Yes, sir.

54. Q. Is not such traffic carried through from Cincinnati to those points in cars in which they were originally shipped at Cincinnati?

A. Not necessarily, sir. It may involve transfers at one or more points.

55. Q. In case of car loads of traffic?

A. Car-load freight would be handled in a through car, I think.

56. Q. Is not the expense of the carrier for strictly local hauls in less than car loads greater per ton per mile than on long through hauls?

A. I consider the hauling of local traffic more expensive than the hauling of through traffic.

162 57. Q. Were not the through rates from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta established primarily to cover the expense of the local hauls originating at the former place and terminating at the latter points?

A. My understanding is that the rate from Chattanooga to Georgia points on the Western & Atlantic road are made according to the Georgia Railroad Commission.

58. Q. Does not the Georgia Railroad Commission establish local rates on traffic between points in that State?

A. It establishes maximum rates.

59. Q. They are local rates, are they not?

A. Yes, sir; not necessarily local.

60. Q. Why not local?

A. They fix the rate between Atlanta and Macon. That can hardly be construed a local rate. They tell you what the maximum shall be between those points.

61. Q. But they also fix the local rate?

A. They fix the maximum rate that can be charged by the carrier between any two points in the State of Georgia.

62. Q. Are not the rates from Chattanooga on the Western & Atlantic Railroad to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta local rates?

A. Yes, sir.

63. Q. And they are fixed by the Georgia Railroad Commission, I believe you said?

A. They are fixed according to the Georgia Railroad Commission tables.

64. Q. Does the Georgia Railro'd Commission establish proportions of through rates from Cincinnati or New York or other points outside of the State of Georgia to points within that State?

A. The Georgia commission do not undertake to fix any rate other than those they have fixed in their tables. As I understand it, they do not meddle with interstate traffic—do not establish proportional rates.

65. Q. They have not jurisdiction, have they, of rates on interstate traffic, or any proportion of those rates?

A. No, sir.

66. Q. You have stated that the competition which affects transporta-

tion to Atlanta has caused the carriers to charge lower rates to Atlanta than to the shorter-distance points, Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, I believe.

A. Yes, sir.

163 67. Q. Would the carriers charge rates higher than the present rates to Atlanta if this competition to that point, affecting transportation to that point, did not exist?

A. If competition was eliminated, I think higher rates would be charged to Atlanta.

68. Q. The present rates to Atlanta, then, from Cincinnati are lower than would be charged if competition affecting transportation to that point did not exist?

A. Yes, sir; my view of the case is that they would be higher.

69. Q. Are not the present rates to Atlanta, then, viewed from the standpoint of the value of the service and excluding competition as an element unreasonably low?

A. No, sir; I think not.

70. Q. If, as you say, that viewed from the standpoint of the value of the service and excluding competition as an element to be considered, the rates to Atlanta are not unreasonably low, then if increased, would they not, considered from the same standpoint, be unreasonably high?

A. They may be considerably increased without being unreasonably high.

71. Q. Will not a material increase of rates already not unreasonably low make such rates unreasonably high?

A. It depends upon the increase.

72. Q. I said material increase.

A. A material increase—in some cases a five-cent advance may be material, considering the circumstances and conditions, while on the other hand a fifty-cent increase might not make a material increase.

73. Q. Well, if it were material, is the question?

A. I do not know that I can answer that any differently.

74. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Ohio and Potomac rivers?

A. Since 1882.

75. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter being included in the longer, ever to your personal knowledge been made in that territory before or since the enactment of the act to regulate commerce in 1887, except in cases of competition in transportation to the longer distance point?

A. So far as my knowledge goes, no exception has been made in making a greater charge for the shorter than for the longer distance under dissimilar circumstances and conditions.

164 76. Q. Is not competition in transportation the only ground or reason for making a higher rate for a shorter than for a longer haul over the same line in the same direction, the shorter being included in the longer?

A. Competition is a controlling factor.

77. Q. Is there any other factor? And if so, state it.

A. No, sir; it is the controlling factor. I do not mean by that simply the competition between carriers, but also competition between markets.

78. Q. State, if you know, whether or not through freight from Cincinnati to Atlanta is delivered free to consignees at Atlanta or by switching to the warehouse doors.

A. I think competition freight is delivered through switching. I do not understand that there is any free cartage in Atlanta.

79. Q. Is such free delivery made at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta?

A. So far as I know, there is no warehouse or store having direct connection with the Western & Atlantic road, and hence the delivery is performed at its depot.

80. Q. Do you know the local rates from Atlanta back to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun?

A. We have a record of them, but I have not them here.

Redirect examination by Mr. BAXTER:

1. Q. Please examine copy of the report made by the Louisville & Nashville Railroad Company to the Interstate Commerce Commission for the year ending June 30, 1893, here shown you [exhibiting report to witness] and from page 17 state the amount of dividends declared during that year.

A. $2,112,000.

2. Q. Refer to page 19 of the same report and state the amount of interest paid by the said company upon its funded debt during said year.

A. $4,233,978.38.

3. Q. Refer to page 45 of said report and state the amount paid by said company during that year for operating expenses.

A. $14,670,055.07.

4. Q. Taking the rates allowed by the Louisville & Nashville Railroad Company upon its entire line of traffic, passenger as well as freight, to and from all points, and upon all the classes, is it true that the revenue derived from that total line of rates would have to be sufficient to
165 pay the amounts shown by that report to have been paid out for dividends, interest on the funded debt, and operating expenses?

A. Yes, sir.

5. Q. Now, suppose a rate upon a particular class of traffic between any two specified points is sufficient to pay its due proportion of operating expenses and interest upon the funded debt, but is not sufficient to pay its proportion of those two items and also its proportion of the dividends, would you consider the company justified in working for that rate?

A. Yes, sir; if it paid something over and above the cost of handling.

6. Q. Now, suppose a rate upon a particular class of traffic between particular points is not sufficient to pay its proportion of dividends or its proportion of the funded debt, but will pay more than its proportion of the operating expenses, would you decline that traffic?

A. No, sir.

7. Q. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your

examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

Recross-examination by Mr. SHAVER:

1. Q. If a given rate to a given point is not high enough to pay operating expenses on the traffic to that point, does not a part of those operating expenses have to be borne by the traffic to other points?

A. We do not mean to take business that will not pay operating expenses.

2. Q. If a given rate to a given point does not pay operating expenses and also something on the dividend and fixed charges, would not a part of the burden of paying those dividends and fixed charges which ought to be borne by the traffic to that point have to be borne by the traffic to other points?

A. I think not. Where freight pays the additional expense in handling it, it is no burden upon any other traffic.

3. Q. I asked if the payment of dividends and of interest on investment, etc., which are known, I believe, as fixed charges—if a part of that burden which ought to be borne by the traffic to a given point, the
166 rate on which does not pay any part of that burden—would it not have to be borne by the traffic to other points?

A. I can not answer differently from what I have done; that is, that traffic that pays the additional expense of handling is not a burden upon those items.

4. Q. As a general rule, ought traffic to all points bear a certain proportion of the burden of the fixed charges?

A. I fancy that is the way everybody would like to have it.

5. Q. I asked if that ought not to be the case as a general rule?

A. Well, there are exceptions to all rules, and as I said, it would be a very desirable rule.

6. Q. That would be equitable and just, would it not?

A. Yes, sir; it would be equitable and just; but the conditions under my previous answer are not inequitable.

Mr. SHAVER. That is all.

FORT MONROE, VA., *June 24, 1897.*

J. M. CULP, a witness on behalf of the defendant, having been duly sworn, testified as follows:

By Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. J. M. Culp; 48 years; Washington, D. C.; traffic manager Southern Railway.

2. Q. How long have you been connected with the traffic departments of railroads in the United States?

A. Upwards of 26 years.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from Cincinnati or other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Alabama. The enforcement of this order would compel the following

reductions in cents per one hundred pounds in the rates from Cincinnati and other Ohio River points to the following stations:

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun.....cts..	2	3	3	3	3	....	6	5	4	3	5	4	8
Adairsville.....	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston.....	8	9	7	7	5	....	8	7	3½	3	7	8	7
Cartersville.....	10	11	9	8	6	1 9	....	8	6	5	8	9	11½
Acworth.....	17	15	13	10	8	311	....	10	7	6	10	11	13
Marietta.....	20	17	15	11	9	410	....	10	7	6	8	12	14

167 State what in your opinion would be the effect of such reductions in said rates, as to increasing the traffic to those stations, so as to make up any losses of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. The effect of such reductions in said rates would not increase the value of traffic carried by the road. It might distribute the traffic differently as between these stations themselves and as between these stations and Atlanta as distributed under the present adjustment. But no more grain or flour, meat, liquors, manufactured articles, merchandise would be shipped or consumed than is at present shipped or consumed with the same population.

4. Q. The rates and distances from Cincinnati to the following stations on the W. & A. Railroad in December, 1892, were as follows:

From Cincinnati, O., to—	Mi.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga.....	396	109	96	84	71	59	44	34	40	32	27	53	57	56
Adairsville.....	405	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston.....	415	115	101	88	75	61	46	35	42	33½	27	55	61	55
Cartersville.....	426	118	103	90	76	62	47	37	43	34	29	56	62	59½
Acworth.....	439	124	107	94	78	64	49	37	45	35	30	58	64	61
Marietta.....	453	127	109	96	79	65	50	38	45	35	30	56	65	62

State whether or not in your opinion such rates are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. They are just and reasonable in that they are not unjustly or unreasonably high. They are lower than the rates at which the property can be transported by any other means of transportation. They have not prevented the shipment of freights. Traffic has been shipped with profit under these rates. They are just relatively to rates to other points in the State of Georgia similarly situated. These rates are based upon rates to Chattanooga, which are controlled and fixed by competition and added to the rates from Chattanooga to the several stations which are the same for the same distance as the rates fixed by the railroad
168 commission of Georgia and pronounced by that body just and reasonable.

5. Q. State what transportation lines actually and actively competed in 1892 and now compete for the transportation of freight from Cincinnati to Chattanooga.

A. The Cincinnati and New Orleans Texas Pacific Railroad Company competed in 1892 and now competes for traffic from Cincinnati to Chattanooga.

The Louisville and Nashville, in connection with the Nashville, Chattanooga & St. Louis Railway, also competes for traffic from Cincinnati.

The Baltimore & Ohio Southwestern also competes via Louisville in connection with the Louisville & Nashville.

The Nashville, Chattanooga & St. Louis Railway Co., and in connection with the Illinois Central Railroad (Louisville division).

The Memphis & Charleston Railroad for traffic from Cincinnati to Chattanooga.

6. Q. The rates from Cincinnati to Chattanooga are as follows:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
76	65	57	47	40	30	20	26	23	19	34	33	38

The distance from Cincinnati to Chattanooga is 336 miles. State whether in your opinion said rates are just and reasonable or unjust or unreasonable, and give your opinion for any opinion you may express.

A. These rates pay more than the cost of transportation; in other words, give a profit over the cost of moving them. They are as high as competition will permit them to be made. Therefore, measured by these standards, they are not unjust and unreasonable.

7. Q. Name the various transportation lines that actually and actively competed in 1892 and now compete as well from Ohio River points as from other sections of the country for transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F classes.

A. I will endeavor to enumerate the principal ones. From the Western section of the country, lines operating from the several Ohio and Mississippi crossings are:

The Cincinnati, New Orleans and Texas Pacific Railway.
The Baltimore and Ohio Southwestern.
The Louisville & Nashville.
The Southern Railway in Kentucky.
The Illinois Central Railroad (Louisville division).
169 The Ohio Valley Railroad.
The Nashville, Chattanooga, St. Louis Railway.
The Illinois Central Railroad (main line.)
The Mobile & Ohio Railroad.
The Memphis & Charleston Railroad.
Kansas City, Memphis & Birmingham Railroad.
The Alabama & Vicksburg Railroad.
The New Orleans & Northeastern Railroad.

Of these, the Louisville & Nashville, the Nashville, Chattanooga & St. Louis, the Illinois Central Railroads have routes from two or more of the river crossings referred to.

These lines named connect at crossings with lines operating beyond the Ohio River and the Mississippi River, reaching the entire Northern, Northwestern, and Western sections of the United States.

Second, from the Northeastern section of the country, including Eastern seaboard cities, there are, in addition to some other lines previously enumerated in the first paragraph—

The Pennsylvania Railroad, the Baltimore & Ohio Railroad, the Philadelphia & Reading Railroad and other lines operating via all rail

routes through Hagerstown, Roanoke Junction, Strasburg Junction, Alexandria, Richmond and Portsmouth, Virginia, in connection with lines operating south of those junctions, such as

The Southern Railway.

The Norfolk & Western Railway.

The Seaboard Air Line.

The Atlantic Coast Line.

The Cape Fear and Yadkin Valley Railroad.

Besides these, there is competition of thoroughly equipped and well-managed steamship routes operating through South Atlantic ports, such as

Merchants & Miners' Transportation Company, operating from Boston via the Chesapeake ports, and from Baltimore via Savannah, Georgia.

The Ocean Steamship Company, from Boston, New York, and Philadelphia via Savannah, Georgia.

The New York & Texas Steamship Company (Mallory line), operating from New York via Brunswick, Georgia.

The Clyde Steamship Line, operating from New York and Boston via Charleston, South Carolina, and from Philadelphia via Chesapeake ports.

The Old Dominion Steamship Company, operating from New York via the Chesapeake port.

The Baltimore Steam Packet Company (Bay line) and the Balti-
170 more, Chesapeake & Richmond Steamboat Company (York River line), operating from Baltimore, Md., via the Chesapeake ports. These various steamship lines have rail connections at said Chesapeake ports or South Atlantic ports, and for years competed and still actively compete for traffic from the entire Eastern seaboard to Atlanta.

8. Q. State whether or not the Southern Railway Company and its connections actually and actively compete for the carriage of freight of the various classes above mentioned to Atlanta; and if so, from what cities?

A. They do actually and actively compete from all the principal Eastern, Western, and Virginia cities, as well as from cities in the Southern States.

9. Q. Does your road or its connections have agents at said cities to solicit said freight for transportation to Atlanta?

A. They do. The Southern Railway at many of the prominent cities; its connections at others; in some cases there are both agents of the Southern Railway and its connections.

10. Q. Does your railroad and its connections advertise at said cities for the transportation of said to Atlanta?

A. They do by having offices established there; by means of tariffs; by active solicitation of business daily.

11. Q. Explain the basis of making rates from Boston, New York, Philadelphia, and Baltimore to Atlanta. Are the rates which are fixed by the Georgia railroad commission from the Georgia seacoast taken into consideration.

A. What are approximately the rates of the steamship companies from Eastern cities to South Atlantic ports are used and to these rates are added the rates from Savannah and Brunswick to Atlanta approved by the railroad commission of Georgia. These rates may not in every instance be exactly the sum of these rates; but that is the general basis, and the rates are approximately on that basis.

12. Q. Can the number of tons carried one mile or the number of tons carried of freight earning revenue or the average receipts per ton per mile or the average cost of carrying one ton one mile either jointly or separately be used as the standard for railroad rate making?

A. It can not and is not.

13. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted?

A. It does. Not only does it affect the rate itself, but it likewise affects the circumstances and conditions under which the property may be carried. Competition will require a road to run trains at a higher rate of speed; it will require it frequently to carry cars loaded to a
171 less weight per car; it will require it to take sometimes a part of a carload without waiting to fill up the car; it will require frequently the road to pay a claim, the payment of which the railroad company might successfully resist, in order to get business; and therefore it does very materially affect the circumstances and conditions under which the property is transported, in add'tional to the rate of freight which it affects.

14. Q. State whether the rates of freight from Ohio River points to Atlanta are controlled to any, and if so to what, extent by competition.

A. They are entirely controlled by competition. They are controlled by competition between the railroads themselves, the railroads leaving from the Ohio River themselves and controlled by competition from the Eastern seaboard. The adjustment of rates on certain classes is based upon the same rates from Cincinnati to Atlanta as from Baltimore to Atlanta. This is not true of all classes, but it is true of a number of classes.

15. Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta as exists at Atlanta, Georgia.

A. There is not the same competition. There is competition existing up to Chattanooga, strong competition, and the rates fixed by that competition are used in making the rates to these local stations; as I have before testified, to these competitive rates up to Chattanooga are added the rates which are the same for the same distances as the rates of the Georgia commission.

Cross-examination by Mr. SHAVER:

1. Q. You stated in your direct examination that certain named reductions in rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta would not increase the tonnage hauled by the road. Would it not increase tonnage to these intermediate points?

A. It might increase it slightly but not materially.

2. Q. Those reductions would make the rates to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta not higher than the Atlanta rates, would they not?

A. Yes, sir.

3. Q. Do not Atlanta merchants under the existing system of rates sell goods at Marietta, Acworth, &c., and in adjacent territory in competition with the local merchants at those points?

A. Yes, sir; and to the merchants likewise, I understand.

4. Q. Are not transportation rates an element that go into the price of goods sold?

172 A. Yes, sir; some articles to a greater extent than others. Into the price of some articles transportation charges enter only to a small extent.

5. Q. Is not the tendency of the reduction in rates to reduce the price of goods and merchandise?

A. Where the transportation charge forms an important part of the price of the goods, a reduction in the freight rate does tend to reduce the price.

6. Q. Does not the reduction in the price of goods tend to increase the consumption of those goods? In other words, are not the people enabled to buy more goods where the prices are low than where they are high?

A. I do not think it increases the consumption materially, provided that the higher rates are not so high as to prevent or materially restrict shipments. Ordinarily a man will wear no more clothes, eat no more, at one rate of freight than another, provided the higher rate of freight is not prohibitory to the traffic.

7. Q. Do not low prices enable more people to buy certain articles of merchandise than would otherwise buy them; or, in other words, put those articles in the reach of more people?

A. Well, if the reduction in the rate is material so as to make a material reduction in the price of the article sold, more goods can be bought for the same amount of money. That goes without saying. But a man does not take a certain amount of money when he goes to buy goods or provisions, or farm implements, or live stock, and buy all that he can with that money. He buys what he needs and as a rule he does not buy any more than that, and a reduction in the rates of freight from Cincinnati to these particular stations between Atlanta and Chattanooga would not, in my opinion, induce a buyer to buy any appreciable amount of merchandise more than he buys upon the present rates.

8. Q. You have just stated that under the existing system of rates Atlanta merchants sell goods at Marietta, Acworth, and these other stations between Chattanooga and Atlanta, and in the territory adjacent to these stations in competition with local merchants at those points. Would not those local merchants be enabled to compete more successfully with the Atlanta merchants if their rates were not higher than the Atlanta rates?

A. They might sell a few more goods. As a matter of fact, Atlanta sells to these merchants to a certain extent.

9. Q. If these merchants had the same rates from Cincinnati as Atlanta, could they not procure their goods from Cincinnati which they now, as you said, buy from Atlanta?

A. As I said, they might buy a certain amount more—yes, sir—direct from Cincinnati. I can not say to what extent, but not to a great extent.

173 10. Q. Is not the tendency of low rates at a locality to induce investment of capital there and also to induce population to come there?

A. If a point were singled out, rates might be made at that point

which would draw population and commerce and industry to that point as against other points where materially higher rates were charged, but I am quite sure that a reduction of the rates from Cincinnati to these points named to the same as the Atlanta rates would not materially increase commerce or the manufacturers of the population of these towns. On manufactured articles, manufactured at local stations, the practice is to make the rate to points of consumption or distribution not higher than the rates from the competitive point beyond manufacturing, and shipping the same kind of manufactured articles to the same point of destination. So that a reduction in the rate from Cincinnati to these points to the same as Atlanta would not likely have any effect upon the manufacture of articles and merchandise at these points.

11. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory are not the rates which are preferential to one of those localities as against the other prejudicial to the business of the locality discriminated against?

A. If there is a material difference in the rates, the locality which has the lower rate has some advantage, but one locality will always have some advantage over another locality. The rates to Atlanta were made by competition which so far has been uncontrollable. The rate exist as a result of that competition. Competition to the same extent does not exist at the local points named. A reduction of the rates from Cincinnati to these local stations to the same as the rates to Atlanta would be to place at these local stations artificially and arbitrarily a compe'tion which does not exist there, and which does exist at Atlanta.

12. Q. The rates on first-class goods, as you have stated, from Cincinnati to Marietta is $1.27, while the rate for the haul to Marietta, 21 miles, on to Atlanta is $1.07, making a difference of 20 cents in favor of Atlanta. Is that a material difference in rates, in your opinion?

A. On first-class goods, if Marietta had the Atlanta rate, in my opinion, it would not receive one pound more of dry goods or of merchandise or articles in first class. It would not sell to the consumer articles at any less price in all probability than it now sells—articles in the first class.

13. Q. Does not Atlanta enjoy advantages in rates over localities in the territory immediately surrounding Atlanta from all directions?

A. Atlanta has lower rates from the West than the localities
174 immediately surrounding her. She has lower rates from the East to some of the localities surrounding her, but not to all localities.

14. Q. Has not Atlanta not only lower rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, but also lower rates from New York and Stone Mountain, Convers, Covington, Social Circles, Madison, and Greensboro on the Georgia Railroad, and relatively as well as absolutely lower rates from Cincinnati, Jonesboro, Hampton, Griffin, Barnesville, and Forsyth on the Central Railroad of Georgia, and lower rates both absolutely and relatively from New York than Newman, Cartersville, Hawkinsville, Lagrange, and West Point on the West Point railroad?

A. The rates from Cincinnati to Atlanta are actually lower than to Calhoun, &c. Rates from New York to Atlanta are actually less than

from New York to Stone Mountain, &c. The rates from Cincinnati to Atlanta are absolutely less than the rates from Cincinnati to Jonesboro, &c., but not relatively less. The rates from New York to Atlanta are actually less than from New York to Newman, &c., but not relatively less.

15. Q. In your direct examination you named certain lines which compete for business from Cincinnati to Chattanooga. May not all these lines be formed to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta by combinations with the Western & Atlantic Railroad upon which those points are located?

A. All are used in forming combinations with the Western & Atlantic for business at these points, and all do compete up to Chattanooga for this business, and the rates are fixed by that competition up to Chattanooga. They are not used in the construction of the rates to these local points.

16. Do not all these lines compete for traffic to Calhoun, Adairsville, Kingston, Acworth, and Marietta?

A. They do all compete up to Chattanooga for business for these stations, naming them.

17. Q. May not all the lines which you named as leading to Atlanta also be formed to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun by combinations with the Western & Atlantic Railroad upon which those points are located?

A. Leading up to Chattanooga, all these lines may compete for business to these local stations as well as to Atlanta, but the competition at Atlanta is stronger. There are lines competing for business from Cincinnati to Atlanta in addition to the lines up to Chattanooga. Between Chattanooga and Atlanta there are the Western & Atlantic Railway, the Southern Railway, the Chattanooga, Rome and Columbus Railway, in connection with the Southern Railway. There are likewise lines
175 leading from Cincinnati to Atlanta which have in the past taken business, namely, by river to Memphis, and then across from Birmingham to Atlanta.

18. Q. Is there not another line of railroad to Cartersville besides the Western & Atlantic?

A. There is the East and West Alabama.

19. Q. Is there not another line of railroad to Kingston besides the Western & Atlantic?

A. Not at present. The line leading between Rome and Kingston is a part of the Nashville, Chattanooga & St. Louis system, of which the Western & Atlantic Railroad is a part.

20. Q. But it is a distinct line of railway?

A. It is, through a lease, a branch line, part of the Nashville, Chattanooga & St. Louis Railway.

21. Q. It is, however, physically, a road running to Kingston from Rome, is it not?

A. It can not be called at present a separate road from the Western & Atlantic Road.

22. Q. It is not on the same road bed. . . . it is a road in a physical sense?

A. It may be called a branch of the Western & Atlantic Railroad from Kingston to Rome.

23. Q. Does it not connect at Rome with other roads leading in various directions?

A. I do not know whether there is a physical connection or not. If there is not a physical connection, business might be transferred anyway.

24. Q. I do not refer to a physical connection. I mean are there not other roads leading to Rome?

A. There are other roads leading to Rome.

24½. Q. Will you name those roads?

A. The Southern Railway and the Chattanooga, Rome and Columbus.

25. Q. Might not a number of lines be formed between Chattanooga and Kingston over those roads and their connections with the branch road from Kingston to Rome as a terminal carrier?

A. The competition at Kingston would not be increased by that. The lines which bring the business to the Western & Atlantic Railroad at Chattanooga would not increase competition at Kingston by sending the business via Rome. Indeed, I do not think that business from Cincinnati is sent to Kingston via Rome. It might if the Western & Atlantic Road would consent to the working of the business to Kingston via that route.

26. Q. You stated in your direct examination that the rates in question in this case from Cincinnati to Calhoun, Adairsville,
176 Kingston, Cartersville, Acworth, and Marietta were just and reasonable. Are you also of the opinion that the lower rates for the longer haul from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta to Atlanta are just and reasonable in and of themselves?

A. They are profitable in that they pay more than the cost of transportation. They are as high as competition will permit the rates to be made and, therefore, by those tests, they are just and reasonable.

27. Q. Is a rate reasonable in and of itself which does not yield the carrier a proper remuneration in excess of the cost of transportation?

A. In my opinion a road is always justified in taking the additional traffic or traffic which it otherwise could not get, to the extent of making a rate as low as the actual movement expense incurred in the movement of that traffic.

28. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost and the expense of the service of carriage?

A. It is very difficult to obtain the actual cost of carriage. Railroads arrive at that result just as nearly as they can, and then they endeavor in making rates to fix that average cost or that estimated cost of carriage as a minimum below which they will not go. Now there may be average cost or estimated cost, including fixed charges. There is the cost which leaves out the fixed charges and take all other kinds of expense; then there is a cost which pertains simply to the movement of a particular business, a cost which is incurred only because that particular business is moved.

29. Q. Is not the expense or the cost of the service of carriage an element to be considered in determining the reasonableness or the unreasonableness of a given rate or set of rates?

A. My experience is that the estimated cost is only used as a minimum below which the carriers will not go.

30. Q. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Other things being equal, the longer the haul, the greater the cost.

31. Q. Other things being equal, is not the consumption of time greater, the greater the length of the haul?

A. Other things being equal, yes. A great deal, however, is covered by that term "other things being equal."

32. Q. Is not the consumption of fuel greater, the greater the length of the haul, other things being equal?

A. Other things being equal, yes.

177 33. Q. Is not the wear and tear on locomotives, cars, tracks, road, etc., greater the greater the length of the haul, other things being equal?

A. Yes, sir.

34. Q. Is not the cost of keeping the road in repair or in good condition greater the greater the length of the haul, other things being equal?

A. Yes, sir.

35. Q. Other things being equal, does it not require more locomotives and cars and more crews for running trains on a long road than on a short road?

A. Other things being equal, yes, sir.

36. Q. Other things being equal, does not distance add to the cost of building a road, and are not therefore the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Other things being equal, yes, sir.

37. Q. Other things being equal, is not the service more valuable to the shipper the greater the length of the haul; in other words, will not a haul of 100 miles give a shipper more extended markets for his goods or produce than a haul of 50 miles?

A. Not necessarily. The haul to the shipper or consignee where he is at a point 100 miles distant from the point of shipment may not be worth as much as the haul to the consignees *a* remote only 50 miles from the same point of shipment.

38. Q. Are not the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta made up of the through rate to Chattanooga plus the local rate from Chattanooga on to those points?

A. Yes, sir.

39. Q. Is not the traffic from Cincinnati, Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta transported under through bills of lading naming the aggregate through rate and issued by the initial carrier at Cincinnati?

A. Shipments are consigned to and through rates are guaranteed by the initial carrier.

40. Q. Is not the expense to the carrier on local hauls in less than carloads greater per ton per mile than on long through hauls?

A. Other conditions being equal, yes, sir.

41. Q. Are not local rates generally made higher per mile than the proportions of through rates for the same distance?

A. Yes, sir; generally; not always.

42. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Ohio and Potomac rivers?

178 A. More than 26 years.

43. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter being included in the longer, ever, to your personal knowledge, been made in that territory before or since the enactment of the act to regulate commerce, in 1887, except in cases of competition in transportation to the longer distance point?

A. Not that I recall. No line willingly and of its own volition arbitrarily reduces the rates to a further point to a less figure than an intermediate point. It is the result of competition where it does make the rate less for the longer then for the shorter distance in the same direction over the same line.

44. Q. You stated in substance, in your direct examination, that the average receipts per ton per mile and estimated cost of carrying one ton one mile on traffic in general did not furnish a standard by which you could determine what was a reasonable rate in a given case, I believe?

A. Yes, sir.

45. Q. Is not such data useful to some extent in determining whether an existing rate is or is not excessive?

A. It is useful in determining whether all the rates are excessive. In other words, the average receipts of a road per ton mile might be so much that, taken in connection with other things, it might be held that the rates were excessive. But much the largest proportion of the tonnage of all roads is carried at rates which are fixed by competition in some form or other, either of carriers or of markets or of one product with another product, which will serve the same purpose.

46. Q. How long have carriers been making out this data as to average receipts per ton per mile and estimated cost of carrying one ton a mile?

A. A great many of them do not do it at all. The Southern Railway to-day does not attempt to figure the cost per ton per mile of carrying freight. The records of the East Tennessee, Virginia & Georgia Railroad show that the estimated average cost for transporting all kinds of freight on all portions of the East Tennessee, Virginia & Georgia Railroad from April 1st, 1891, to June 24, 1892, inclusive, was seventy-one one-hundredths (.71) of a cent per ton per mile.

47. Q. Has not this data been kept by other roads for a great many years?

A. I have no information that any road has invariably kept the cost per ton per mile for a great many years. Some roads have done it for some years, I know.

48. Q. They have done it for their own use, have they not?

179 A. I presume so. It is published in their annual reports. I will say that my opinion is that it is very difficult if not impracticable to arrive at the actual cost per ton per mile of moving freight traffic over my road.

49. Q. This data is based upon actual calculation, is it not?

A. The average receipts per ton per mile are very easily arrived at. The average cost per ton per mile, as I have testified, is estimated as to the East Tennessee, Virginia & Georgia Railroad.

50. Q. The average receipts per ton per mile are the result of accurate calculation, is it not?

A. Yes, sir.

51. Q. Was not Atlanta recognized as a competitive point by the Southern Railway and Steamship Association?

A. Yes, sir.

52. Q. Are not the rates now in force from Atlanta to Cincinnati the same as they were during the existence of the Southern Railway & Steamship Association?

A. Yes, sir; on these classes referred to.

53. Q. Were not the rates which were maintained while the Southern Railway & Steamship Association was in existence promulgated by that association with the consent of the carriers, members of that association?

A. Published by their consent and direction.

54. Q. Is not the Southeastern Freight Association the successor to the Southern Freight Association, which, in 1895, succeeded the Southern Railway & Steamship Association?

A. Yes, sir; but under a different agreement.

Redirect examination by Mr. BAXTER:

1. Q. Something has been said in the cross-examination in regard to the value of the service. May there not be a difference between the value of the service to the shipper and the value of the service to the carrier?

A. Precisely. The value of the service to the shipper or consignee for the transportation of 100 lbs. of stuff may be only 25 cents per hundred pounds. The value of that service may be to the carrier greater from at least two reasons: One, that it will cost it more to perform the service than the 25 cents; another reason that it may be employing all of its motive power and rolling stock in the transportation of property which yields it for an equivalent service much more net money than 25 cents would for the service referred to.

180 2. Q. If the shipper living at Memphis, where cotton is worth in the market, say, 10 cents, ships that cotton to Holly Springs, where it is worth in the market only 9 cents a pound, would not the value of the service to him be less than nothing?

A. It would; one cent per pound less than nothing.

3. Q. If, on the other hand, he shipped it from Holly Springs, where it was worth 9 cents per pound, to Memphis, where it is worth 10 cents per pound, the value of the service to him would be one cent, would it?

A. Yes, sir; one cent per pound; and in either case the value of the service to the railroad company might be the same.

4. Q. Please file as Exhibit No. 1 to your deposition a copy of the articles of agreement of the Southeastern Freight Association.

A. I will do so.

(The same is hereto attached marked "Culp Exhibit No. 1.")

5. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

NASHVILLE, TENN., *July 14, 1897.*

JAMES R. THOMPSON, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. James R. Thompson; 43 years old; Atlanta; with the Southeastern Freight Association.

2. Q. State whether you were connected with the Southern Railway and Steamship Association and afterwards with its successor, the Southern State Freight Association; and, if so, in what capacity?

A. Yes, sir; I was a clerk in the statistical department.

3. Q. In both associations?

A. Yes, sir.

4. Q. Please examine the statement here handed you, headed—

"Statement of tonnage from the Eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia to Atlanta, Ga., during the year ended March 31st, 1893."

State whether you compiled said statement from the records of the Southern Railway and Steamship Association.

181 A. Yes, sir; I compiled it from the records of the Southern Railway and Steamship Association.

5. Q. If you say you compiled said statement as aforesaid, state whether you compiled it correctly and filed it as Exhibit number 2 in this case.

A. Yes, sir; I compiled it correctly from the records and I file it herewith as Exhibit number 2.

(The statement referred to is hereto attached, marked Exhibit No. 2.)

6. Q. State whether the figures under the heading "Weight" refers to pounds or tons.

A. Pounds.

7. Q. Please examine the statement headed

"Classified statement of tonnage from points on and beyond the Ohio and Mississippi rivers and from and via Lexington, Kentucky; and from Nashville, Tennessee; Johnsonville, Tennessee; and Florence, Sheffield, and Riverton, Alabama, to Atlanta, Georgia, during the year ended March 31st, 1893."

State whether you compiled said statement from the records of the Southern Railway and Steamship Association.

A. I did, and it is correctly compiled from the records.

8. Q. File said statement as Exhibit No. 3 in this case.

A. I file the same herewith.

(The statement referred to is hereto attached, marked Exhibit No. 3.)

9. Q. State whether the figures in the body of said statement refer to pounds or tons.

A. Pounds.

10. Q. Under the heading "Lines" there appear certain initials. Give the names in full of the railroads referred to by said initials.

A. The Louisville and Nashville Railroad, the Cincinnati Southern Railway, the Louisville Southern Railroad, the Newport News and Mississippi Company, the Ohio Valley Railway, the Paducah, Tennessee,

and Alabama Railroad, the Illinois Central Railroad, the Mobile and Ohio Railroad, the Nashville, Chattanooga and St. Louis Railway, the Memphis and Charleston Railroad, the Kansas City, Memphis and Birmingham Railroad, the Yazoo and Mississippi Valley Railroad, the Georgia Pacific Railway, the Alabama and Vicksburg Railway, the New Orleans and Northeastern Railroad, the Birmingham, Sheffield and Tennessee River Railway, the Richmond and Danville Railroad.

11. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this
182 your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not know that I can.

Cross-examination by Mr. SHAVER:

12. Q. What relation did you say you sustained to the Southern Railway and Steamship Association?

A. I was clerk in the statistical department.

2. Q. For how long and during what period?

A. I have been with them for nearly ten years. The Southern Railway and Steamship Association, the Southern States Freight Association, and the Southeastern Freight Association.

3. Q. Was the Southern Railway and Steamship Association in existence during 1892?

A. Yes, sir.

4. Q. Did you compile the data that is in the two exhibits, numbered two and three, presented by you in your direct examination?

A. Yes, sir; I took them from the association's records. Of course I did not get up all those statements, but I did that from the printed records.

5. Q. From the records of the Southern States Freight Association?

A. Yes, sir.

6. Q. When did that association come into existence?

A. I could not tell you the exact year. I could get it for you at the office.

7. Q. Did not the Southern Railway and Steamship Association cease to exist in 1895?

A. Two years ago that would be. That is just about the time.

8. Q. These statements, Exhibits Nos. 2 and 3, to your answer purport to contain data for the year which ended March 31, 1893?

A. Yes, sir; that was taken from the Southern Railway and Steamship Association's records.

9. Q. And not from the records of the Southern States Freight Association?

A. They are just one. One went into the other. In 1893 it was the Southern Railway and Steamship Association and we were working under the Southern States Freight Association when they were made, but afterwards they were taken from the records of the Southern Railway and Steamship Association.

10. Q. You have no personal knowledge of the accuracy of the data contained in either of these exhibits, have you?

183 A. Yes, sir; I helped get it up from the billing—taken from the billing of the railroads sent to us every day. Now, that

western statement I helped get up from the billing. The eastern statement I took from the records after it was gotten up.

Counsel for the Commission moved to exclude Exhibits 2 and 3 on the ground that they are irrelevant, based on hearsay, and otherwise incompetent and illegal.

11. Q. Will you please examine this document and state whether it is the agreement of the Southern States Freight Association made on the 8th day of October, 1895?

A. I could not tell you. It just reads that, but I could not swear to it. I do not know anything about that.

12. Q. What is your relation to that association?

A. I am just a clerk.

13. Q. And you cannot identify that as an agreement of that association of that date?

A. No, sir; I could not say that was it. I can only say what is before me there—I could not prove it.

Mr. BAXTER. Exhibits Nos. 4 and 5 presented to the witness by counsel for the Commission are agreed to by counsel for the defendant to be correct copies of the agreements, which they purport to be.

(The agreements above referred to are hereto attached, marked Exhibits Nos. 4 and 5.)

Redirect examination by Mr. BAXTER:

1. Q. How were the statistics contained in Exhibits Nos. 3 and 4 to your deposition obtained by the Southern Railway and Steamship Association; from whose records were they compiled?

A. It was taken from the billings that was sent in by all the railroads to our office on all competitive business.

2. Q. Did each of the railroad companies that was a member of the Southern Railway and Steamship Association send into that association copies of its billing for transportation of competitive freight?

A. Yes, sir.

3. Q. And it was from those billings that those statistics were originally compiled by the association?

A. Yes, sir.

4. Q. How many of those billings on an average do you suppose were received by the association daily—rough estimate?

A. I expect we get about two or three thousand bills a day.

184 5. Q. How many clerks were required to compile the statistics for those billings?

A. Fourteen, I think, in our department.

6. Q. Did you get billings from any railroad companies that were not members of the association?

A. I do not think we did.

Recross-examination by Mr. SHAVER:

1. Q. All those companies named on Exhibits 2 and 3 were members of the Southern States Freight Association?

A. Yes, sir.

2. Q. And you said that that data was taken from the record of the Southern Railway and Steamship Association?

A. Yes, sir.

3. Q. Those roads were also members of the Southern Railway and Steamship Association, were they not?

A. Yes, sir; I think they were.

Redirect examination by Mr. BAXTER:

1. Q. The Southern States Freight Association succeeded the Southern Railway and Steamship Association, did it not?

A. Yes, sir.

2. Q. And all the records of the latter were turned over to the former?

A. Yes, sir.

3. Q. What association succeeded the Southern States Freight Association?

A. The Southeastern Freight Association.

4. Q. Were all the records of the Southern States Freight Association turned over to the Southeastern Freight Association?

A. Yes, sir; at least, I suppose they were. We have all of them. We kept them. It is exactly the same thing and has another name. It is not the same altogether.

5. Q. Are all the roads which are named in Exhibits Nos. 2 and 3 members of the Southeastern Freight Association?

A. No, sir.

NASHVILLE, TENN., *July 15, 1897.*

JOSEPH M. BROWN, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

185 A. Joseph M. Brown; 42nd birthday; my personal residence is Marietta, Georgia; my official residence, Atlanta, Georgia; occupation, traffic manager of the Western & Atlantic Railroad Company.

2. Q. How long have you been connected with the railroad transportation business in the United States, and in what capacities?

A. Since the 1st day of January, 1877. I went into the service as freight clerk, and filled a number of subordinate positions, as freight conductor, car agent and inspection agent here at Nashville, claim agent, accountant, freight agent, general freight agent, and passenger agent and traffic manager.

3. Q. State how the rates charged by the Western & Atlantic Railroad from Chattanooga to stations on the Western & Atlantic Railroad compare with the rates authorized and approved by the Georgia Railroad Commission as reasonable and just for similar distances in the State of Georgia.

A. The rates charged by the Western & Atlantic Railroad from Chattanooga to Western and Atlantic local stations are in accordance with the standard tariff rates of the Railroad Commission of Georgia. The standard tariff of the Georgia commission is, in a number of cases, reasonable and just; in quite a few cases the standard rates of the aforesaid commission are lower than the conditions would seem to warrant. This is specially apparent when comparison is made with rates in force in other Southern States. Upon only three roads in the State of Georgia is the

standard tariff operated, namely, the Western and Atlantic Railroad, the Rome Railroad, operated by the Western and Atlantic, and the Georgia Railroad. All other roads are allowed certain percentages of increase, except on classes C, D, F, J, and P of the standard tariff. These increases range from 10 to 50 per cent.

4. Q. Do you mean that the other railroads in Georgia are allowed by the commission of that State to charge from 10 to 50 per cent more than the Western Atlantic Railroad, except upon the classes mentioned?

A. Yes, sir; the railroad commission have established what they call a standard tariff, and that standard tariff is only made obligatory upon the Western and Atlantic and the Georgia Railroad and this little Rome Road that we operate. Every other road in the State, including the Central, the Southern, the Atlanta and West Point, the Plant System, are all allowed to charge from 10 to 50 per cent higher than the standard tariff.

5. Q. File as Exhibit No. 6 in this case the following pages
186 from the 23rd Annual Report of the Railroad Commission of Georgia, from October 15, 1894, to October 15, 1895, viz: pages 64, 65, 66, 67, 123, 124, 126, 127, 128, *128*, 129, and 130.

A. Yes, sir; I file the same herewith.

(The pages of the report referred to are hereto attached, marked "Exhibit No. 6.")

6. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Atlanta. The enforcement of its order may compel the following reductions in cents per hundred pounds in rates from Cincinnati and other Ohio River points to the following stations:

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun	2	3	3	3	3	....	6	5	4	3	5	4	8
Adairsville	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston	8	9	7	7	5	....	8	7	3½	5	7	8	7
Cartersville	11	11	9	8	6	1	9	5	6	5	8	9	11½
Acworth	17	15	13	10	8	3	11	10	7	6	10	11	13
Marietta	20	17	15	11	9	4	10	10	7	6	8	12	14

State what, in your opinion, would be the effect of such reductions in said rates, as to increasing the traffic to those stations so as to make up for any loss of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. The reductions in the rate from Ohio River points to Western and Atlantic stations would not have the effect of increasing the movement of traffic to any appreciable extent. Certainly the reduction in the matter of dollars and cents to the Western and Atlantic Railroad would greatly exceed the revenue which the road would earn on whatever increase the reduction brought. I reach this conclusion from the fact that the movement of traffic from the Ohio River crossings and points basing thereon now consist largely of groceries, clothing, boots, and shoes. The reduction of these rates would not have an appreciable effect upon the price to

the consumer. From my observation the customer would not enter into large transactions with the merchants in his town and burden himself with an undue amount of goods simply because the town in which he was located had been given somewhat lower rates than had hitherto been in use.

I offer three homely and practical illustrations which go to show that the reductions, however material they may be in their effect on the revenue on the roads, carry no benefit to the consumer.

187 An ordinary suit of clothes ready made retails at Acworth, Georgia, for about $12.50. The weight of a suit will average five pounds. The Interstate Commerce Commission in its decision of 1892 ordered a change from one dollar and thirty-four cents to one dollar and seven cents for a hundred pounds of clothing, or a reduction of 17 cents a hundred pounds, quite an item to the railroads. If the purchaser should receive the full benefit of the reduction he would get his suit for 85-100 of one cent less than he formerly gave.

A pair of shoes average in weight three pounds. A change from $1.24 to $1.07 per hundred pounds in the freight rate changes the price to the consumer, if he received the benefit of it, one-half of one cent. This would hardly appeal to him to increase his purchases.

The rate on class B, packing-house products, is 45 cents per hundred pounds to Acworth. If a change should be made to the Atlanta rate of 35 cents per hundredweight, the benefit to be derived by the consumer on a ham weighing fourteen pounds would be one and one-half cents.

7. Q. Rates and distances from Cincinnati to the following stations on the Western & Atlantic Railroad in December, 1892, were as follows:

From Cincinnati to—	Mi.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	396	109	95	84	71	59	44	24	40	32	27½	53	57	3[illegible]
Adairsville	405	112	98	86	73	60	45	35	41	32½	28	54	59	5[illegible]
Kingston	415	115	101	88	75	61	46	36	42	31½	27	55	61	5[illegible]
Cartersville	426	118	103	90	76	62	47	37	43	34	29	56	62	5[illegible]
Acworth	439	124	107	94	78	64	49	39	45	35	30	58	64	6[illegible]
Marietta	453	127	109	96	79	65	50	38	45	35	30	56	65	6[illegible]

State whether or not, in your opinion, said rates are just and reasonable or unjust and unreasonable, and give your reasons for any opinion you may express.

A. The rates operated in 1892 from Cincinnati to Western and Atlantic stations were based on the through rates from Cincinnati to Chattanooga plus the locals of the Western and Atlantic Railroad from Chat-

188 tanooga. I deemed the rates made on the aforesaid basis just and reasonable. This statement I made from the fact that the rates to Chattanooga from Cincinnati on traffic for Western and Atlantic stations are practically the same as the portions which accrued on traffic destined to Atlanta and points basing thereon. It should be also borne in mind that the cost to the railroad is very much greater to handle traffic destined to local points than it is on through traffic. For example, the time between Chattanooga and Atlanta for through schedules is about 7 to 8 hours, while the time consumed by the local trains, doing work at the way stations, is 12 to 14 hours. Also the necessary expense at the local stations is more in proportion than at the terminal points, for the reason

that there is not sufficient work to keep the agent and their assistants busy, while at the terminal points only sufficient force is kept to do the work.

The Western and Atlantic rates from Chattanooga to Western and Atlantic stations are the same as the standard rates of the Georgia railroad commission, and those rates are from 10 to 50 per cent lower than the rates in force on the majority of roads in this State. As an illustration of the reductions which have taken place in the Western and Atlantic locals, I submit a rate sheet issued in July, 1866, by Mr. J. B. Smith, master of transportation of the Western and Atlantic Railroad, and those now in effect from Chattanooga to Acworth, Georgia.

The rate per hundred pounds in force were as follows:

1st class.

July, 1866	$2.00
June, 1897	$ .48

2nd class.

July, 1866	$1.25
June, 1897	$ .42

3rd class.

July, 1866	$ .78
June, 1897	$ .37

4th class.

July, 1866	$ .59
June, 1897	$ .31

5th class.

July, 1866	$ .54
June, 1897	$ .24

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6th class.

July, 1866	$ .36
June, 1897	$ .19

8. Q. In 1887 the Western and Atlantic Railroad issued a circular, through its connections, stating, in effect, that it would not accept less than its regular local charges on through business to points on its lines where competition did not compel it to participate in and agree to lower through rates. State whether or not the Nashville, Chattanooga and St. Louis Railway, as lessee of the Western and Atlantic Railroad, has continued to operate the Western and Atlantic Railroad under the notice contained in said circular. If you have a copy of said circular file it as an exhibit in this case.

A. The Nashville, Chattanooga and St. Louis Railway, as lessee of the Western and Atlantic Railroad, has continued to operate the Western and Atlantic Railroad under that notice contained in the circular issued

by the Western and Atlantic Railroad in 1887, which set forth the basis of making and dividing rates to Western and Atlantic local stations.

I have not been able to procure a copy of the Western and Atlantic Railroad circular issued in 1887. Said circular was in the files of the old leased company, which has been removed from the present offices and can not be located. The circular in question was published in the Atlanta Evening Capital, a paper now out of print and its file unobtainable.

Permit me to make this further explanation about that. When the interstate-commerce law was passed the Georgia Railroad issued a notice to its connections of the same purport as the one we have referred to, and it struck me as being a very proper notice, and I had a similar circular issued and sent to our connections, and, in accordance with law, we printed it in one of the daily gazettes of Atlanta. There were at that time three newspapers published—the Constitution, the Evening Journal, and the Evening Capital. The editor of the Evening Capital was quite a strong personal friend of ours and we thought it would be thoroughly legal notice in any one of the papers and gave the preference to the editor of that paper. That paper afterwards suspended—it died—and I have not been able to find anybody who has the files of it; and the circular in question was among the archives of the former company which leased and operated the Western and Atlantic Railroad, and all of their old papers are now scattered everywhere. I do not know what has become of them and hence I have been unable to get that circular, although I remember I issued it myself and remember the
190 purport of it thoroughly and make this sworn statement as to the matter.

Q. (Mr. SHAVER.) Have you, yourself, made search for this circular?

A. Yes, sir.

Q. (Mr. SHAVER.) Where?

A. I had had a number of old papers, just my own, pertaining to the old lease while I was a traffic official of it, and then there was a lot of old papers that they had that were sold to the Marietta Paper Company, and with Mr. Dickey, our general freight agent, I endeavored to find that, but that proved to be mainly old books and copies of way bills and things of that kind and we did not find it among them.

Q. (Mr. SHAVER.) Where should this circular properly have been filed?

A. You mean legally? You mean with the old Western and Atlantic Railroad or with the Interstate Commerce Commission?

Q. (Mr. SHAVER.) I mean in what office of the railroad.

A. It should have been filed in the traffic manager's office.

Q. (Mr. SHAVER.) Did you make a search there for it?

A. Yes, sir.

Q. (Mr. SHAVER.) That circular was issued after the passage of the interstate-commerce law?

A. Yes, sir.

Q. (Mr. SHAVER.) Was a copy of it filed with the Commission?

A. It was mailed to them. I do not know whether it got there or not.

Q. (Mr. SHAVER.) What was the date of its issue?

A. I could not give you exactly the date. It was after the passage of

the law, when a similar circular came from the Georgia Railroad
191 and when I saw Colonel ..... circular, I thought it proper for the Western and Atlantic Railroad to issue a similar circular, and we did issue it.

Q. (Mr. SHAVER.) Have you made inquiry of the proper officer of the Commission to ascertain whether the circular was filed or not?

A. I requested Mr. Dickey, our general freight agent, to get it, if possible, and I could not tell you whether he has gotten it or not. I could not tell you whether he has made that request of the Commission.

(Counsel for the Commission objects to the testimony as to the contents of the circular named, on the ground that the circulars itself is the best evidence of its contents, and no predicate has been laid for the introduction of secondary testimony as to the contents of said circular.

Counsel for the defendants refers to and relies upon the following language contained in the report and opinion of the Commission in this case: "In 1887 the Western and Atlantic Railroads issued a circular to its connections stating in effect that it would not accept less than its regular local charges on through business to point' on its lines where competition did not compel it to participate in and agree to lower through rates. This circular does not appear to have been filed with the Commission, nor were the defendants able to produce it at the hearing, but there is no reason to doubt its having been issued.

"When the circular was issued this road was under management, but the lessee now operating the roads introduces evidence concerning the circular, and continues to charge according to its terms.")

9. Q. State what voice, if any, the Western and Atlantic Railroad has in the making of rates from Cincinnati to Chattanooga.

A. The Western and Atlantic Railroad has no voice in making the rates from Cincinnati to Chattanooga.

10. Q. State what transportation lines actually and actively compete for the transportation of freight from Cincinnati to Chattanooga.

A. Cincinnati, New Orleans and Texas Pacific Railway and the Louisville and Nashville, in connection with the Nashville, Chattanooga and St. Louis Railway, actually and actively compete for the transportation of freight from Cincinnati to Chattanooga.

11. Q. The rates from Cincinnati to Chattanooga are as follows:

[Classes. Rates in cents per 100 lbs.]

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
76	65	57	47	40	30	20	26	23	19	34	33	38

192 The distance from Cincinnati to Chattanooga is 336 miles. State whether, in your opinion, said rates are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. The rates from Cincinnati to Chattanooga, as cited in this question, are just and reasonable when the distance, the volume of the traffic, the physical condition of the roads, and the comparison with rates in other portions of the South are considered.

12. State what were the proportions received by the different carriers out of the rates from Cincinnati to Atlanta in effect in November, 1892.

A. The proportions were as follows:

Class 1.	Cin. Sou	65.2
	W. & A	31.1
	Total	107
Class 2.	Cin. Sou	65.2
	W. & A	26.8
	Total	92
Class 3.	Cin. Sou	57.4
	W. & A	23.6
	Total	81
Class 4.	Cin. Sou	48.2
	W. & A	19.8
	Total	68
Class 5.	Cin. Sou	39.7
	W. & A	16.3
	Total	56
Class 6.	Cin. Sou	32.6
	W. & A	13.4
	Total	46
Class A.	Cin. Sou	19.9
	W. & A	8.1
	Total	28
193 Class B.	Cin. Sou	24.8
	W. & A	10.2
	Total	35.0
Class C.	Cin. & Sou	19.9
	W. & A	8.1
	Total	28.0

Class D.	Cin. Sou.	17.0
	W. & A.	7.0
	Total	24.0
Class E.	Cin. Sou.	34.0
	W. & A.	14
	Total	48.0
Class H.	Cin. Sou.	37.6
	W. & A.	15.4
	Total	33
Class F.	Cin. Sou.	34.0
	W. & A.	14.0
	Total	48.0

Those were the divisions via the Cincinnati Southern.

These are the divisions via the L. & N., the N. C. & St. L., and the W. & A.:

Class 1.	L. & N.	50.2
	N. C. & St. L.	125.7
	W. & A.	31.1
	Total	107.0
Class 2.	L. & N.	43.1
	N. C. & St. L.	22.1
	W. & A.	26.8
	Total	92.0
Class 3.	L. & N.	37.0
	N. C. & St. L.	19.5
	W. & A.	23.6
	Total	81.0
Class 4.	L. & N.	31.9
	N. C. & St. L.	16.3
	W. & A.	19.8
	Total	68.0
Class 5.	L. & N.	26.2
	N. C. & St. L.	13.5
	W. & A.	16.3
	Total	56.0

Class 6.	L. & N.	21.5
	N. C. & St. L.	11.1
	W. & A.	13.4
	Total	46.0
Class A.	L. & N.	13.2
	N. C. & St. L.	6.7
	W. & A.	8.1
	Total	28.0
Class B.	L. & N.	16.4
	N. C. & St. L.	8.4
	W. & A.	10.2
	Total	35.0
Class C.	L. & N.	13.2
	N. C. & St. L.	6.7
	W. & A.	8.1
	Total	28.0
Class D.	L. & N.	11.2
	N. C. & St. L.	5.8
	W. & A.	7.0
	Total	24.0
195 Class E.	L. & N.	22.5
	N. C. & St. L.	11.5
	W. & A.	14.0
	Total	48.
Class H.	L. & N.	24.9
	N. C. & St. L.	12.7
	W. & A.	15.4
	Total	53.0
Class F.	L. & N.	22.5
	N. C. & St. L.	11.5
	W. & A.	14.0
	Total	48.0

13. Q. State what said proportions received by the Western & Atlantic amounted to in cents per 100 lbs. on each of the classes.

A. The proportions were as follows:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
4.51	3.88	3.42	2.87	2.36	1.94	1.17	1.48	1.17	1.01	2.03	2.23	2.03

14. Q. Did the proportions which said Western & Atlantic Railroad received on each of said different classes of freight shipped from Cincinnati or other Ohio River points via Chattanooga, destined to Atlanta, in 1892, exceed the additional cost to said Western & Atlantic Railroad of the movement of said freight?

A. The proportions which the Western & Atlantic received on the different classes of freight shipped from Cincinnati and other Ohio River points destined to Atlanta in 1892 exceeded the additional cost to the Western & Atlantic Railroad of the movement of said freight.

15. Q. I have shown above the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, and Acworth. What were the proportions received by said Western & Atlantic Railroad on each of said classes of freight shipped from Cincinnati and other Ohio River points via Chattanooga destined to each of said stations?

A. The proportions accruing to the Western & Atlantic Railroad on traffic from Cincinnati destined to Western & Atlantic stations were as follows from Chattanooga:

196	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun	33	30	27	24	19	14	14	14	9.5	9	20	26	19
Adairsville	36	33	29	26	20	15	15	15	9.5	9	20	26	19
Kingston	39	36	31	28	21	16	16	16	10	9.5	21	28	20
Cartersville	42	38	33	29	22	17	17	17	11	10	22	29	21.5
Acworth	48	42	37	31	24	19	19	19	12	11	24	31	23

16. Q. What did those proportions amount to in cents per ton per mile on each of said classes to each of said stations?

A. The foregoing proportions amounted to the following per ton per mile:

	1.	2.	3.	4.	5.	6.
Calhoun	11.00	10.00	9.29	8.00	6.33	4.66
Adairsville	10.29	9.43	9.00	7.43	5.71	4.29
Kingston	9.75	9.00	7.75	7.00	5.25	4.00
Cartersville	9.33	8.44	7.33	6.44	4.88	3.78
Acworth	9.32	8.16	7.18	6.02	4.66	3.69

	A.	B.	C.	D.	E.	H.	F.
Calhoun	4.66	4.66	3.00	2.83	6.33	8.00	12.00
Adairsville	4.29	4.29	2.71	2.57	5.71	7.43	10.86
Kingston	4.00	4.00	2.50	2.37	5.29	7.00	10.00
Cartersville	3.78	3.78	2.44	2.22	4.88	6.44	9.55
Acworth	3.69	3.69	2.33	2.13	4.66	6.02	8.93

17. Q. Name the various transportation lines, all rail or all water, or part rail and part rail and part water that actually and actively competed in 1892 and now compete as well from Ohio River points as from other sections of the country for transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The following all-rail lines competed in 1892 for the transportation of freight, covered by numbered and lettered classes, to Atlanta from Ohio River points:

Louisville & Nashville Railroad in connection with the Nashville, Chattanooga & St. Louis Railway to Chattanooga, thence Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Cincinnati, New Orleans & Texas Pacific Railway in con-
197 nection with the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Louisville & Nashville Railroad in connection with the East Tennessee, Virginia & Georgia via Jellico.

The Louisville Southern Railway in connection with the Cincinnati, New Orleans & Texas Pacific Railway and the Western & Atlantic Railroad, the East Tennessee, Virginia & Georgia Railroad, or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Kansas City, Memphis & Birmingham and the Georgia Pacific Railway.

The Ohio Valley Railroad in connection with the Newport News & Mississippi Valley Company and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Ohio Valley Railroad in connection with the Newport News & Mississippi Valley Company, the Kansas City, Memphis & Birmingham, and the Georgia Pacific Railway.

The Illinois Central Railroad in connection with the Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Illinois Central Railroad in connection with the Memphis & Charleston and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Illinois Central Railroad in connection with the Kansas City, Memphis & Birmingham Railroad and the Georgia Pacific Railway.

The Mobile & Ohio Railroad in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or the East

Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Mobile & Ohio Railroad in connection with the Kansas City, Memphis & Birmingham Railroad and the Georgia Pacific Railway.

198 From Mississippi River crossings:

The Memphis & Charleston Railroad in connection with the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Louisville & Nashville Railroad in connection with the Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Louisville & Nashville Railroad in connection with the Western Railway of Alabama and the Atlanta & West Point Railroad.

The Louisville & Nashville Railroad in connection with the East Tennessee, Virginia & Georgia Railroad.

The Louisville & Nashville Railroad in connection with the Georgia Pacific Railway.

The Kansas City, Memphis & Birmingham Railroad in connection with the Georgia Pacific Railway.

The Illinois Central Railroad in connection with the Georgia Pacific Railway.

The Yazoo & Mississippi Valley Railroad in connection with the Georgia Pacific Railway.

The Vicksburg & Meridian Railroad in connection with the Alabama Great Southern Railroad or the Georgia Pacific Railway.

The New Orleans & Northeastern Railroad in connection with the Alabama Great Southern Railroad or the Georgia Pacific Railway.

The New Orleans & Northeastern Railroad in connection with the Alabama Great Southern Railroad and the Western & Atlantic Railroad.

From South Atlantic ports:

The Central of Georgia Railway direct.

The Port Royal & Augusta Railroad in connection with the Georgia Railroad.

The Savannah, Florida & Western Railroad in connection with the East Tennessee, Virginia & Georgia Railroad.

The South Carolina Railroad in connection with the Georgia Railroad.

The Charleston & Savannah Railroad in connection with the Port Royal & Augusta Railroad and the Georgia Railroad.

The Charleston & Savannah Railroad in connection with the Savannah, Florida & Western Railway and the East Tennessee, Virginia & Georgia Railway.

199 The Atlantic Coast Line in connection with the Richmond & Danville Railroad.

The Seaboard Air Line direct.

From Virginia cities:

The Seaboard Air Line direct.

The Richmond & Danville Railroad direct.

The Norfolk & Western Railroad in connection with the East Tennessee, Virginia & Georgia Railroad.

The Norfolk & Western Railroad in connection with the East Tennessee, Virginia & Georgia Railroad and the Western & Atlantic Railroad.

The Atlantic Coast Line in connection with the Seaboard Air Line.

From Eastern cities, all rail:

The Baltimore & Ohio Railroad in connection with the Richmond & Danville or the Atlantic Coast Line or the Seaboard Air Line.

The Pennsylvania Railroad in connection with the Richmond & Danville Railroad or the Atlantic Coast Line or the Seaboard Air Line.

The Western Maryland Railroad in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

The Western Maryland Railroad in connection with the Norfolk & Western Railroad, the East Tennessee, Virginia & Georgia Railroad, the Western & Atlantic Railroad.

The Cumberland Valley Railroad in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

The Cumberland Valley Railroad in connection with the Norfolk & Western Railroad, the East Tennessee, Virginia & Georgia Railroad, and the Western & Atlantic Railroad.

The Philadelphia & Reading Railroad in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

From Eastern cities, rail and water:

The Old Dominion Steamship Company in connection with the Seaboard Air Line or the Norfolk & Western or the Atlantic Coast Line.

Ocean Steamship Company in connection with the Georgia Railroad.

200 The Clyde Line in connection with the South Carolina & Georgia Railroad and the Georgia Railroad.

The Clyde Line in connection with the Seaboard Air Line or the Norfolk & Western Railroad or the Atlantic Coast Line.

The Merchants & Miners Transportation Company in connection with the Seaboard Air Line or the Norfolk & Western Railroad or the Atlantic Coast Line.

The Bay Line in connection with the Seaboard Air Line.

18. Q. Are the Louisville and Nashville Railroad, the Nashville, Chattanooga and St. Louis Railway, and the Western and Atlantic Railroad under any common control or management? If so, what is it?

A. They are not.

19. Q. Are the Cincinnati, New Orleans and Texas Pacific Railway and the Western and Atlantic Railroad under any common control or management?

A. They are not.

20. Q. State whether the rates on freight from Ohio River points to Atlanta are controlled to any, and if so, to what, extent by competition.

A. Rates from Ohio River points to Atlanta are controlled by competition and that to a considerable extent. First, competition of rail lines actively and actually engaged in the carriage of freight between Ohio River points and Atlanta has its effect upon the rates. Second, competition of markets, Cincinnati, Louisville, Evansville, and Cairo with Eastern markets, Baltimore, Philadelphia, New York, and Boston,

which enjoy low water rates to the ports plus the rates of the inland carriers, affect the rate from Ohio River points.

21. Q. State whether or not there has been and can be carried from Cincinnati, Ohio, to Baltimore and other Eastern cities, via the trunk lines, and then by independent steamships or sailing vessels to Southern ports, and then to Atlanta by railroads wholly within the State of Georgia, and whether such shipments have been made and can be made without issuing through bills of lading.

A. Shipments have been made and can be made from Cincinnati to Atlanta, via the routes indicated in the question, without issuing through bills of lading.

22. Q. State whether the rates which have been and can be made by the trunk lines from Cincinnati to Baltimore and other Eastern cities and thence by steamship or sailing vessel, thence by the Georgia railroads to Atlanta, control to any extent the rate which can be charged by the direct rail lines operating from Cincinnati to Atlanta.

201 A. Rates which have been made and can be made by the trunk lines from Cincinnati to Atlanta via the route indicated in your question are in a measure potent in fixing the rates via the direct rail lines from Cincinnati to Atlanta.

23. Q. State whether or not competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. Competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

24. Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta as is sufficient to affect the rates charged by the two rail lines from Cincinnati and other Ohio River points to those stations.

A. There is no such competition at Calhoun, Adairsville, Kingston, and Acworth. At Cartersville and Marietta there is a slight indirect competition, but not of such a character as is sufficient to affect the rates charged by the direct rail lines.

25. Q. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I know of nothing else which is material to the issue.

Cross-examination by Mr. SHAVER:

1. Q. Cannot the lines which you have named in your direct examination from Cincinnati to Atlanta all be extended to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta by combination of those lines with the Western Atlantic roads as the terminal carrier.

A. They could not be and preserve the same relative commercial conditions that affect the Western and Atlantic in its carriage to Atlanta.

2. Q. They could be formed, could they not?

A. They could be figured up, but at quite a serious loss to the Western and Atlantic road, without any relative advantage to those communities.

3. Q. Is not traffic transported from Cincinnati over the Louis-
202 ville & Nashville road, the Nashville, Chattanooga and St. Louis road, and the Western and Atlantic road to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through bills of lading naming an aggregate through rate to those points?

A. Well, I could not right off hand say whether they issue the through bills of lading to our stations or not. I know that they have rates which they publish to our local points.

4. Q. Through rates?

A. Yes, sir, through rates; but as to whether they enter those on the bills of lading, I really would be unable to tell you this minute.

5. Q. Is not traffic transported from Cincinnati by the Cincinnati, New Orleans and Texas Pacific Railway and the Western and Atlantic Railroad under through bills of lading to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta?

A. I will have to make the same answer to that question.

6. Q. Is not traffic transported by that line under through rates to those points from Cincinnati?

A. I understand that they publish in Cincinnati through rates to those points?

7. Q. Is it not a general rule that the short line fixes the rate to given points.

A. That is the general rule. That has been the general rule, but within the last few years the rates have been made by concert of the road after determining what competition of markets as well as the competition of routes required as being just to the various communities, and the short line you may say has not been regarded in the last few years.

8. Q. The routes, then, from Cincinnati to Atlanta are established by the concert of roads?

A. They are established after the competitive forces have been ascertained, the lines which have been brought in by those competitive forces adopting the rates which have been forced by competition. There is a general agreement, in other words, that whenever rates are forced by competition we will all make between two points.

9. Q. Are not the rates from Cincinnati to Atlanta by all lines the same?

A. That is what I understand.

10. Q. Are not those rates the same now as they were in 1892 and when the Southern Railway and Steamship Association was in existence?

A. I think they are substantially the same—substantially they
203 have been the same—minor changes here and there of a class, but substantially, I think, about the same.

11. Q. Were not those rates originally promulgated by the Southern Railway and Steamship Association?

A. I believe they were.

12. Q. Is it not true that whatever rates were promulgated by that association were agreed to by the lines and the roads members of such association and participating in such rates?

A. I think they were.

13. Q. What roads besides the Western and Atlantic is Cartersville located on?

A. It is the terminas of the East and West road of Alabama.

14. Q. Does not that road make connection with the various other roads between Pell City and Cartersville and its terminus at Pell City?

A. Yes, sir; between Cartersville and its terminus.

15. Q. At what points and what road?

At Rockmart and Piedmont it is crossed by the Southern Railroad; at Cedartown by the Chattanooga, Rome and Columbus.

16. Q. Can not lines be formed over those various roads from Cincinnati to Cartersville?

A. Well, I presume they could by consent, but my understanding has been that the East and West road has declined to accept that business except on payment of its full local from junction points to Cartersville.

17. Q. My question was whether lines could not be formed.

A. They could be formed by the consent of the roads in question if they chose.

18. Q. On what roads besides the Western and Atlantic is Kingston located?

A. It is located on our branch roads, the Rome roads; we own the branch that runs from Kingston over to Rome.

19. Q. Does not that branch road have connection with various other roads; and if so, at what points and with what roads?

A. At Rome with the Southern Railway and the Chattanooga, Rome and Columbus Railroad.

20. Q. Could not lines be formed with those roads from Cincinnati to Kingston?

A. No, sir; we would not agree to form a line.

21. Q. Could they not be formed if the carriers were willing?

A. As a matter of fact, as a physical possibility, of course they could, if our road chose to do so to its own detriment.

204 22. Q. The number of lines that could be formed between two given points, if you go far enough away from the direct route, would be almost unlimited, would it not?

A. Yes, sir.

23. Q. As a general rule, is not the natural tendency of a material reduction in rate to a given point towards improving and increasing the business at that point?

A. Well, I do not know that I would be willing to say that that would be the controlling factor, because it might to a great many towns, but there are other points that the location is such that their territory only needs a certain amount of the various kinds of goods and they would not take any more whether the rate were reduced or whether it stood.

24. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material redaction in rates to a given point towards improving and increasing business at that point?

A. Well, that would depend altogether on the territory or geographical location of the town. I do not see how you can lay down a general rule that would cover it. You might take one point where there were conditions that were affected by the water and rail transportation that would tend to greater distribution. There are others where the transportation facilities are limited and they supply naturally the local trade around; and, as a general rule, the first class of cases the business would increase,

and, as a general rule, in the second class of cases the business would not be affected to any degree that I could imagine; that is, not appreciably.

25. Q. As a general rule, and in the absence of exceptional conditions, is not the natural tendency of a material reduction in the rates to a given point towards the encouragement of the investment of capital at such point and the increase of its population.

A. Well, I would answer that pretty much like I did the previous question. That to take points like Atlanta, Rome, and Macon—they have rail lines passing from point to point—it would enable them to do it. But you take a point like Barnesville or Conyers, on the Georgia Railroad, or Calhoun, on the Western and Atlantic road, and they supply simply local trade around in their counties. I do not think it would tend at all in those cases to increase the volume of the trade of those places.

26. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does
205 not a system of rates which is preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

A. I should say that could be laid down as a rule.

27. Q. If the rate from Cincinnati to the shorter-distance points—Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta—were made not higher than those to Atlanta, would not that enable the local merchants at those intermediate points to compete more successfully with the merchants at Atlanta for business at those points and in adjacent territory?

A. I do not think so, because the merchants in Atlanta do not, to any appreciable degree, ship except to the merchants at Marietta and Acworth. They do not ship to individual parties. In other words, a man in Atlanta does not ship to a farmer who lives out in the country two miles from Acworth, but he ships to the Acworth merchants himself and the Acworth merchants are really benefitted by being able to buy from Atlanta for this reason. He can give his order by wire at 12 o'clock to-day for five boxes of bacon, for instance, and to-morrow morning about 11 o'clock those boxes of bacon are there ready for his trade. If he orders them from Chicago or Cincinnati, he has got to wait probably just for a small, less than carload, shipment as much as a week before he can get it there. So that Atlanta does not hurt these towns, but is a real convenience to those towns. She furnishes their goods so much quicker than they can get them from Cincinnati and Louisville.

28. Q. Can you haul goods from Cincinnati to those points to Atlanta and from Atlanta back to those points quicker than you can haul them to those points in the first instance?

A. I suspect probably you can. The through schedules are made on time freight, and they operate right straight on through, and with Acworth, or Calhoun, for instance, it is transferred at Chattanooga and then put on the local freight and goes down. I would say that it could be probably a day or more quicker to ship to Atlanta. Although to a number of stations on the Western and Atlantic probably that would not be the case. It is a question that I have not looked into as to the exact time, but to the lower stations I think I could.

29. Q. You stated in your direct examination that the reduction in rate to these intermediate points would not benefit those points, because they would amount to an insignificant sum on a suit of clothes, etc. While that might be a matter of very small moment to the consumer, would not such reductions benefit the persons who sell large quantities of these goods?

A. I do not see that it would be any material benefit to the
206 merchants. Certainly it would not be as great a benefit to the merchants as it would be a loss to the road, and it would not enable a merchant to hold his trade any more than he now holds it to those papers.

30. Q. Are not through shipments made from Cincinnati to merchants at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta?

A. I think they are.

31. Q. Does the Georgia Railroad Commission undertake to establish through rates on interstate commerce or any proportion of any such through rates?

A. No, sir.

32. Q. Do they not confine their operations in that respect to fixing rates on traffic between points wholly within the State of Georgia?

A. They do, except in the case of our own roads. The Western and Atlantic road, when that road was leased to the Nashville, Chattanooga and St. Louis Railway Company, a section of the lease act provided that the rate over the entire length of the Western and Atlantic road should be no greater than the rate prescribed by the Georgia Railroad Commission; consequently our local tariff, and upon the local tariff would be based the rates to all local stations, are made the standard tariff of the State of Georgia.

33. Q. Are not the rates from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta local rates?

A. Yes, sir.

34. Q. Are not the rates from Atlanta to Marietta, Acworth, Cartersville, Kingston, and Calhoun local rates?

A. Yes, sir.

35. Q. I believe you stated in your direct examination that the expense to the carrier on strictly local hauls per ton per mile was much greater than on long through hauls for the same distance?

A. Yes, sir.

36. Q. You stated in your direct examination that the proportions of the Western & Atlantic Railroad of rates on goods from Cincinnati to Atlanta and also to intermediate stations between Chattanooga and Atlanta exceeded the add'tional cost of the service?

A. Yes, sir.

37. Q. Are the rates from Cincinnati to Calhoun, Adairsville, Cartersville, Acworth, and Marietta reasonable in and of themselves?

207 A. I think they are.

38. Q. Are the lower rates from Cincinnati through those intermediate points and for the longer hauls through those points to Atlanta, also, in your opinion, reasonable in and of themselves?

A. Yes, sir.

39. Q. Is a rate reasonable in and of itself which does not yield the

carrier a proper remuneration over and above the cost of service of carriage?

A. I should say not. If carried for less than cost, it would be unreasonably low.

40. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first ascertaining the cost or expense of the service or carriage?

A. Well, it is very hard to determine regarding each particular shipment. Proba'ly it is impossible to determine regarding each particular shipment whether it, considered by itself, is remunerative or not. There are so many conditions attending the running of trains and so many cars that an engine can carry, and things of that kind, that I do not see how we can lay down a general rule that would cover the case.

41. Q. Is not the expense of the service of carriage an element to be considered in determining whether a rate or set of rates is reasonable?

A. In general, yes.

42. Q. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Well, I should say that is a factor.

43. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Necessarily so, other things being equal.

44. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. As a general proposition, yes.

45. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, roadbeds, etc., greater the greater the length of the haul?

A. Yes, sir; the more miles to be traversed the more the wear and tear on the tracks and things of that kind, as a general proposition.

46. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the road?

A. All other things being equal, I should say so.

208 47. Q. Other things being equal, does it not require more locomotives and cars and crews for the running of trains on a long road than on a short one?

A. That would vary with the length of the road quite materially.

48. Q. Other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. The character of the country being the same, whether a plain country or mountains, I should say so.

49. Q. Would higher rates be charged from Cincinnati to Atlanta but for competition?

A. Yes, sir.

50. Q. If the rule that there shall be no greater charge for a shorter than a longer haul over the same line in the same direction were observed *by observed* by all the roads or lines from a given point to a given point, would it be necessary for any of those roads or lines to depart from this

rule in order to retain its share of the traffic and prevent diversion of its traffic to other roads or lines?

A. Well, I do not know that I could say whether it would or not, there being so many varying conditions that affect the traffic over one line or another. A very serious question to consider would be how much was each line's proportion*ed*, and there would be a big dispute. One line might be getting what the other lines thought was its proportion and it did not think it was, and if it thought that the other roads were getting a part of its proportions it would probably reduce its rates in order to get back its proportions? That is how these competitive forces work, and I think that would be the case, as a general rule.

51. Q. How long have you been engaged in the railroad business east of the Mississippi and south of the Virginias and the Ohio Rivers?

A. Something over twenty years.

52. Q. Has the greater charge for the shorter than the longer haul, over the same line, in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory, except in cases of competition in transportation to the longer distance point?

A. I do not know that it has, sir, of my own observation.

Redirect examination by Mr. BAXTER:

209 1. Q. Is it possible to charge as much from Cincinnati to Atlanta as is charged from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta?

A. No, sir.

Re-cross examination:

1. Q. Why is it not possible?

A. Because the competing lines have lower rates, and if we advance the rates we would get none of the business.

2. Q. It would divert the traffic?

A. Divert the traffic to competing lines.

3. Q. Suppose the rates by all the lines were advanced, would that prevent it being diverted?

A. Not if it were the same by all the lines, but you see what a number of lines there are, and I do not think it is possible.

4. Q. You stated that the rates from Cincinnati to Atlanta would be higher but for competition. Is that not the case as to all the lines from Cincinnati?

A. Yes, sir.

NASHVILLE, TENNESSEE, *July 16, 1897.*

R. E. LUTZ, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. R. E. Lutz; residence, Montgomery, Alabama; age, 46; freight traffic manager of the Atlanta and West Point Railroad, and the Western Railway of Alabama.

2. Q. How long have you been connected with the railroad freight transportation business in the United States, and in what capacities?

A. In the transportation and traffic about twenty-eight years. I first started out as telegraph operator, then as local agent, then as train dispatcher, then as contracting freight agent, then as chief clerk in the general freight office, and afterwards general agent, and then traffic manager.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Atlanta. The enforcement of its order may compel the following reductions in cents per hundred pounds in rates from Cincinnati and other Ohio River points to the following stations:

210	Classes.											
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, cts	2	3	3	3	3	....	6	5	4	3	5	4	6
Adairsville	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston	8	9	7	7	5	....	8	7	3½	3	7	8	7
Cartersville	11	11	9	8	6	1	9	8	6	5	8	9	11½
Acworth	17	15	13	10	8	3	11	10	7	6	10	11	13
Marietta	20	17	15	11	9	4	10	10	7	6	8	12	14

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to those stations so as to make up for any loss of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. The reduction of rates to Western and Atlantic Railroad stations, as ordered by the Interstate Commerce Commission, would have the effect of reducing to such an extent the proportions that accrue to the Western and Atlantic Railroad. The entire reduction as ordered by the Interstate Commerce Commission must come out of the proportion that accrues to the Western and Atlantic Railroad, and therefore would make quite a serious reduction in the revenue of the Western and Atlantic Railroad, without affecting in one way or the other the revenue of the lines to Chattanooga. To Marietta, Georgia, for instance, on a shipment from Cincinnati the Western and Atlantic Railroad now receives for its proportion 51 cents per hundred pounds of first class, while a reduction of 20 cents decreases this revenue practically 40 per cent with the corresponding reduction on other classes.

While the reductions ordered would make such deep inroads on the revenues of the Western and Atlantic Railroad, it would not make such a difference in the through rates as to have the effect of increasing the volume of business. The great majority of shipments made from Cincinnati and like distributing centers, to small towns, such as the stations on the Western and Atlantic Railroad, are less than car load lots, and therefore embraced in the first six classes.

You can appreciate the improbability of a reduction causing an increase in the volume of business when we consider, for instance to Marietta, where the reduction is the greatest, it would only amount to two cents on a suit of clothes, estimating the weight thereof at ten pounds; and a small fraction of a cent on a hat or other light or miscellaneous high

class goods. That such slight difference in the cost of goods would increase consumption is entirely improbable.

211 4. Q. Rates and distances from Cincinnati to the following stations on the Western & Atlantic Railroad in December, 1893, were as follows:

From Cincinnati to—	Mi.	1.	2.	3.	4.	5	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	396	109	95	84	71	59	44	34	40	32	27½	53	57	56
Adairsville	405	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston	415	115	101	88	75	61	46	36	42	31½	27	55	61	55
Cartersville	426	118	103	90	76	62	47	37	43	34	29	56	62	59½
Acworth	439	124	107	94	78	64	49	39	45	35	30	58	64	61
Marietta	453	127	109	96	79	65	50	38	45	35	30	56	65	62

State whether or not, in your opinion, said rates are just and reasonable, or unjust and unreasonable, and give your reasons for any opinion you may express.

A. I believe the rates from Cincinnati to Western and Atlantic Railroad stations named to be just and reasonable because the rate per ton per mile does not lead me to believe them unreasonable in themselves and because they are not higher than are charged from other points of distribution to stations on other roads under similar circumstances and conditions.

I give you below the rates and distances from New Orleans, Louisiana, to local stations on the Western Railway of Alabama, and from Mobile, Alabama, to Western and Atlantic stations:

From New Orleans, La., to—	Mi.	Classes.												
		1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Shorters, Ala	343	117	105	92	75	64	49	37	42	33	26	62	49	60
Milstead	348	121	108	94	76	65	50	38	43	35	28	63	51	64
Chehaw	359	127	113	98	78	67	52	38	44	36	29	65	56	68
Loachapoka	372	125	108	95	80	66	53	35	46	38	30	61	58	66
Notasulga	366	128	111	98	80	67	53	36	45	37	30	62	57	68

212 From Mobile, Ala., to—	Mi.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H	F.
Calhoun, Ga	413	113	96	83	68	59	47	30	37	27	22	51	53	46
Kingston	394	118	96	83	68	59	47	30	37	27	22	51	53	46
Marietta	375	113	96	83	68	59	47	30	37	27	22	51	53	46
Adairsville	404	117	99	86	71	61	48	31	38	27⅝	22½	53	56	47
Cartersville	403	117	99	86	71	6	48	31	38	27⅝	22½	53	56	47
Acworth	390	119	101	88	73	62	49	32	39	28	23½	54	58	48⅝

5. Q. State what transportation lines actually and actively compete for the transportation of freight from Cincinnati to Chattanooga.

A. The Cincinnati, New Orleans and Texas Pacific Railway and the Louisville and Nashville Railroad are the two most active competitors of freight from Cincinnati to Chattanooga. The Chesapeake and Ohio Railroad, the Chicago, Hamilton and Dayton Railway, the Baltimore and Ohio Southwestern Railway, in connection with the Norfolk and Western Railway through Kanovan, West Virginia; Ironton and Portsmouth, Ohio, likewise respectively compete—Cincinnati to Chattanooga—especially now that the association has been disbanded, under which a territorial division of business was attempted between Western and Eastern lines.

Not an impracticable route for business, Cincinnati to Chattanooga, is via the Ohio and Mississippi rivers from Memphis and then via the Memphis and Charleston Railroad. There is also water competition via the Ohio and Tennessee rivers.

6. Q. The distance from Cincinnati to Chattanooga is 356 miles, and the rates from Cincinnati to Chattanooga are as follows:

Class.												
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
76	65	57	47	40	30	20	26	23	19	34	34	38

State whether, in your opinion, said rates are just and reasonable, or unjust and unreasonable, and give your reasons for any opinion you may express.

A. The rates named from Cincinnati to Chattanooga are, in
213 my opinion, just and reasonable. They are in fact somewhat lower than would be but for active competition by the all-water route via the Ohio and Tennessee rivers. For instance, we find that the rates to Chattanooga from Mobile, a distance of 419 miles, to be as follows:

Class.												
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
93	78	67	54	47	37	20	27	20	16	39	39	32

And the rates are the same from Mobile to Opelika, a distance of 246 miles.

We also find rates from Lynchburg to Nashville, Tennessee, a distance of 355 miles, to be as follows:

Class.												
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
84	79	64	50	43	37	24	34	28	27	45	52	55

It is unnecessary to state that the rates from Cincinnati to Atlanta, a distance of 138 miles further than Chattanooga, are considerably higher than to Chattanooga; more so in fact than would be justified by the difference in distance alone. It is here seen that under similar circumstances and conditions, the rates from and to other points are, if anything, greater than from Cincinnati to Chattanooga.

7. Q. Name the various transportation lines all rail, or part rail and part water, that actually and actively competed in 1892 and now compete as well from Ohio River points as from other sections of the country for transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The competition from all territories to Atlanta is keen, and I herewith mention a number of lines competing from various territories in 1892 and at the present time from the Ohio River.

The Cincinnati, New Orleans and Texas Pacific Railway in connection with the Western and Atlantic Railroad.

The Southern Railway, or the Chattanooga, Rome and Columbus road.

The Louisville and Nashville Railroad, in connection with the Nashville, Chattanooga and St. Louis Railway and the Western and Atlantic Railroad.

The Illinois Central Railroad, and the Ohio Valley Railroad in connection with the Memphis and Charleston Railroad, or the Kansas City, Memphis and Birmingham Railroad and their connections, the Western and Atlantic Railroad, the Southern Railroad and the Central Railroad of Georgia.

214 The Mobile and Ohio Railroad in connection with the Memphis and Charleston Railroad and the Kansas City, Memphis, and Birmingham Railroad and their connections, the Southern Railway from Winona, Mississippi, the point of connection with the Illinois Central Railroad or West Point, Mississippi, the point of connection with the Mobile and Ohio, and the Western of Alabama, and Atlanta and West Point Railroad from Opelika, the point of connection between the Central of Georgia, also form a long route competing for business from the Ohio River.

From Mississippi River points, St. Louis to New Orleans inclusive, the same lines compete as from the Ohio River with the addition of the Missouri Pacific Railway and branches, the St. Louis, Alton, and Terre Haute, and the Alabama and Vicksburg, the New Orleans and Northeastern, the Alabama Great Southern, and the Mobile and Birmingham.

I do not suppose it is desirable to enumerate the numerous lines north or west of the Ohio and Mississippi rivers that enter into competition to Atlanta.

From Eastern territory lines compete for Atlanta business via Cincinnati in connection with the Louisville and Nashville Railroad, the Cincinnati, New Orleans and Texas Pacific Railway and through the all-rail gateways from Hagerstown, Alexandria, or Richmond in connection with the Norfolk and Western Railroad, the Southern Railway, the Atlantic Coast Line, and the Seaboard Air Line.

The four last named roads also actively compete from Norfolk, Portsmouth, Richmond and Wilmington for Eastern business brought to those ports by water from South Carolina and Georgia Railroad, the Charleston and Western Carolina, the Georgia Railroad, the Southern Railway and the Seaboard Air Line compete for Eastern business through the port of Charleston; and the Central of Georgia Railway, the Plant System, the Florida Central and Peninsular Railway, the Charleston and Western Carolina Railroad, the Georgia Railroad, the Georgia and Alabama Railroad, the Georgia Southern and Florida, the Western Railway of Alabama, the Atlanta and West Point Railroad, compete for Eastern business through the port of Savannah.

The principal steamship lines competing for Eastern business to Atlanta are:

The Clyde Line.
The Old Dominion Line.
The Merchants and Miners' Transportation Company.
The Merchants' Steamship Company.
The Mallory Line.

215 8. Q. State whether or not the Atlanta and West Point Railroad and the Western Railway of Alabama and their connections actually and actively compete for the carriage of freight of the various classes to Atlanta; and if so, from what cities.

A. The Atlanta and West Point Railroad and the Western Railway of Alabama and their connections actually and actively compete for the carriage of freight of the various classes to Atlanta from Birmingham, Alabama; Memphis, Tennessee; Kansas City, Missouri; and all points south thereof, including Mobile, Alabama; New Orleans, Louisiana; and all Texas and Mexico and California points. We also compete from Columbus, Macon, and Savannah, and other points in Georgia and Florida south thereof, as well as from Northeastern cities, via steamship through the port of Savannah.

9. Q. Does your railroad or its connections have agents at said cities to solicit freight for transportation to Atlanta?

A. The Atlanta and West Point Road and the Western Railway of Alabama or their connections have agents at said points from which we compete for freight to Atlanta who solicit freight for transportation to Atlanta.

10. Q. Does your railroad and its connections advertise in said cities for transportation of said freight to Atlanta?

A. The Atlanta and West Point Railroad and the Western Railway of Alabama or its connections advertise at said points above mentioned for the transportation of freight to Atlanta, Georgia.

11. Q. Explain the basis of making rates from Boston, New York, Philadelphia, and Baltimore to Atlanta. Are the rates which are fixed by the Georgia railroad commissioners from the Georgia seacoast to Atlanta taken into consideration?

A. The rates from the East to Atlanta were agreed to in August, 1882, on the basis of certain rates from New York to South Atlantic coast points, which were practically the local rates of the steamship to which were added the published rates from the South Atlantic ports to Atlanta. These rates from the South Atlantic ports were made with reference to the rate required by the Georgia railroad commission from Savannah to Atlanta. The railroad commission's rate were not adhered to in every instance, as the figures in connection with the steamship arbitraries did not make what was considered a proper alignment for through rates. The Georgia commission rates, however, being carefully observed as a maximum, the rates from Boston and Philadelphia were made the same as from New York, where from Baltimore they were made a differential less.

216 12. Q. State whether the rates on freight from Ohio River points to Atlanta are controlled to any, and if so to what, extent by competition.

A. The rates from Cincinnati and Louisville to Atlanta are controlled to a certain extent by competition from Baltimore and other Eastern cities.

13. Q. State whether the rates which have been and can be made by the trunk lines from Cincinnati to Baltimore and other Eastern cities and then by steamship or sailing vessels, and thence by the Georgia Railroad

to Atlanta, control the rates which can be charged by the direct rail lines operating from Cincinnati to Atlanta.

A. The rates that have been and can be made by the trunk lines from Cincinnati to Baltimore and steamship or sailing vessels in connection with the Georgia road to Atlanta unquestionably influence the adjustment of rates, or control them to the extent that the direct lines could not afford to make the rates high' than at present, as to do so would enable the circuitous route to compete for the business at a profit.

14. Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta as is sufficient to affect the rate charged by the direct rail lines from Cincinnati and other Ohio River points to those stations.

A. There is no competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta which would interfere with the rates adopted by the direct lines from Cincinnati and from other Ohio River points, said rates being made with relation to the rates from other points of competition, such as Eastern cities.

15. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. Competition between carriers has always been recognized as a factor in determining rates, its importance varying with the degree and nature of the competition. The simple fact that two roads pass through the same point does not necessarily make rates to that point different from what they would be if situated only on one line. This is particularly the case where two roads are really not in actual competition as to the termini drawing business from different sections. Water competition is an important factor in the adjustment of rates and invariably has the effect of making them low, on account of the exceeding cheapness with which water lines can carry freight.

217 16. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. No, sir.

Cross examination by Mr. SHAVER:

1. Q. In answering the direct interrogatories propounded to you, you read from a manuscript before you. How long ago did you prepare those answers?

A. About a month.

2. Q. You had been previously furnished with the interrogatories, had you?

A. Yes, sir.

3. Q. Might not a reduction in rates, which would be of no appreciable benefit to an individual consumer, greatly benefit a merchant who sells to a large number of consumers?

A. On certain classes perhaps it would. On others it would not. Take it on the lower classes, what we call commodity rates, B, C, D, and F, it would; on the higher classes, in my opinion, it would not.

4. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that point?

A. I can not say that it would. In some cases it might, and in many cases it might not.

5. Q. Is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at that point, and the increase of its population?

A. Not in all cases.

6. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates preferential to one of these localities and discriminatory against the other, benefit the one and injure the other?

A. There is no question but that is correct—that it does.

7. Q. You stated in your direct examination that, in your opinion, the rates involved in this case, from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta were just and reasonable in and of themselves.

218 A. Yes, sir.

8. Q. Is that your opinion also as to the lower rates for the longer hauls from Cincinnati through those points to Atlanta?

A. Yes, sir.

9. Q. Do the Atlanta rates yield the carriers revenue in excess of the cost of the services of carriage?

A. In my opinion they do.

10. Q. Is a rate reasonable in and of itself which does not yield the carrier a proper remuneration over and above the cost of the service of carriage?

A. No, I would not consider it a reasonable rate if it did not yield the carrier sufficient revenue over and above the cost of transportation.

11. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the expense of the service of the carriage.

A. That would be the only means we would have of knowing or trying to approximate as to about what the cost—that is trying to find out the cost as near as you can of carrying a ton of freight a mile or anything in excess of that—quite a number of things you have to take into consideration in saying whether that would be a profitable rate or not. For instance, you might at certain seasons of the year haul certain freight on certain trains that had to move anyhow, whether they had one car or whether they had twenty. In that case you could probably move a car of freight or a ton of freight at much less expense than you could had you to provide special service, or if it were at other times of the year. There are times when we accept certain freights that we would not accept at other times. I will take the local freight, for instance, that will run between Atlanta and West Point. That train has got to run; we have got to pay the engineer and we have got to pay the crew; and by adding on probably one or two more cars, or something of that kind, it probably would not add to the cost of the train but very little more. Now, if we had to go to work to perform a certain service for a

certain class of low freight, we often could not afford to haul it; we would not haul it; we turn down lots of it.

12. Q. The transportation of the hindmost car would cost the road as much for transporting it the same distance as it cost for the foremost car?

A. That would not always be the case for the very reason that the foremost car would not be switching back and forth as much, being attached to the engine, and the wear and tear of that car and the cost of repairs to that car, and the accidents to that car would not be as
219 great as the hindmost car that was constantly being switched from the point of shipment to the final destination. Going into the switch so often might cause a draw frame to be pulled out or a brake beam broken or something of that kind, and even if no accident happened to the car, there is obliged to be more wear and tear on that car.

13. Q. Does not the cost or the expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. Yes, sir.

14. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Yes, sir.

15. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. Yes, sir.

16. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, and roadbed, etc., greater the greater the length of the haul?

A. Yes, sir.

17. Q. Other things being equal, is not the cost of keeping the road in repair or good condition greater the greater the length of the road?

A. Yes, sir.

18. Q. Other things being equal, does it not require more locomotives and cars and crews for running a train on a long road than on a short one?

A. Yes, sir.

19. Q. Other things being equal, does not a distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital, greater the greater the length of the road?

A. Yes, sir.

20. Q. Is not the expense to the carrier, on strictly local hauls, greater per ton per mile than on long through hauls?

A. Yes, sir.

21. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio River?

A. Nearly 25 years.

22. Q. Has the greater charge for the shorter than the longer hauls over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in cases of competition in transportation to the longer distance point?

A. No, sir.

220 23. Q. Is not a rate under which traffic will move and which is not so high as to divert the traffic to other roads and lines, in your opinion, a reasonable rate?

A. Yes, sir.

24. Q. Are not the rates in question in this case from Cincinnati, Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta made up of the through rates to Chattanooga plus the local rates from Chattanooga to those points?

A. In my opinion, the rates are made from Cincinnati to the above-mentioned points on the basis of the through rates to Chattanooga, Rome, Dalton, or Atlanta, plus the locals.

25. Q. They are combinations of through and local rates?

A. Yes, sir.

26. Q. Does the Georgia railroad commission undertake to establish through rates on interstate commerce or any proportion of such rates?

A. No, sir.

27. Q. Are not the rates on the Western and Atlantic Railroad from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta local rates?

A. Yes, sir.

28. Q. Are not the rates from Atlanta over the Western and Atlantic road to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun local rates?

A. Yes, sir.

29. Q. You named in your direct examination a number of lines that could be formed from Cincinnati to Chattanooga and Atlanta. Can not all those lines also be formed to Adairsville, Calhoun, Kingston, Cartersville, Acworth, and Marietta by combination with the Western and Atlantic Railroad?

A. Yes, sir.

30. Q. On what road is Kingston located besides the Western and Atlantic road?

A. The Rome Railroad.

31. Q. Does not the Rome Railroad make connection at Rome with a number of other roads?

A. Yes, sir.

32. Q. On what road besides the Western and Atlantic is Cartersville located?

A. The East and West Railroad.

33. Q. Does not that road make connection at various points between Cartersville and its terminus at Pell City with other roads; and if so, with what roads?

A. Yes, sir; it makes connection at Piedmont and at Pell
221 City; at Pell City with the Southern Railway, and at Piedmont with the Alabama Great Southern.

34. Q. Is not traffic transported from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through rates?

A. I think it is.

35. Q. And also under through bills of lading issued by the initial carrier?

A. Yes, sir; I believe so.

36. Q. Are not the rates by all the lines from Cincinnati to Atlanta the same?

A. Yes, sir.

37. Q. Is it not the rule that the short lines fixes the rate between two given points?

A. Yes, sir.

38. Q. Would higher rates be charged from Cincinnati to Atlanta than are charged but for competition?

A. Yes, sir; in my opinion they would.

NASHVILLE, TENNESSEE, *July 17, 1897.*

W. A. WINBURN, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. State your name, age, residence, and occupation.

A. W. A. Winburn; age, 37; residence, Savannah, Ga.; occupation, general freight agent of the Central of Georgia Railway.

2. Q. How long have you been connected with the railroad transportation business in the United States and in what capacities?

A. Since 1881, as clerk in the local freight office, clerk in the assistant general freight office, division freight and passenger agent, and general freight agent, respectively.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Atlanta. The enforcement of its order may compel the following reduction in cents per hundred pounds in rates from Cincinnati and other Ohio River points to the following stations:

222	Class'es.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun.....cts..	2	3	3	3	3	....	6	5	4	3	5	4	8
Adairsville.....	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston.....	8	9	7	7	5	....	8	7	3½	3	7	8	7
Cartersville.....	11	11	9	8	6	1	9	8	6	5	8	9	11½
Acworth.....	17	15	13	10	8	3	11	10	7	6	10	11	13
Marietta.....	20	17	15	11	9	4	10	10	7	6	8	12	14

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to those stations so as to make up for any loss of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. I do not believe that it would increase the volume of traffic to any extent, because it would remove any probability of a jobbing business at any of these points and the trade would be confined to the local consumption of the citizens and surrounding farmers.

There would be one important difference in the situation. The heavy goods, instead of being distributed from Chattanooga, Rome, and Atlanta, as at present, would probably be bought at the Ohio and Mississippi

River markets and beyond, at least as far as the credit of the merchants at the local points would permit them to trade at these points.

The others would necessarily continue to buy at Atlanta, Chattanooga, and Rome, and pay a combination of the transportation charges higher than their competitors with better credit.

4. Q. Rates and distances from Cincinnati to the following stations on the Western & Atlantic Railroad in December, 1892, were as follows:

From Cincinnati to—	Mi.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	396	109	95	84	71	59	44	34	40	32	27½	53	57	56
Adairsville	405	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston	415	115	101	88	75	63	46	36	42	33½	27	55	61	55
Cartersville	426	118	103	90	76	62	47	37	43	34	29	56	62	59
Acworth	439	124	107	94	78	64	49	39	45	35	30	58	64	61
Marietta	453	127	109	96	79	65	50	38	45	35	30	58	65	62

223 State whether or not, in your opinion, said rates are just and reasonable or unjust and unreasonable, and give your reasons for any opinion you may express.

A. I do not know what basis those rates are made on, but if they are not higher than the rates which competition has forced to Chattanooga, Rome, and Atlanta, plus the local rates prescribed by the State railroad commission, I consider them reasonably low.

5. Q. Name the various transportation lines, all rail or all water or part rail and part water, that actually and actively competed in 1892 and now compete, as well from Ohio River points as from other sections of the country, for transportation to Atlanta of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The Old Dominion Steamship Company.
The Southern Railway.
The Pennsylvania Railroad.
The Seaboard Air Line.
The Atlantic Coast Line.
The Norfolk and Western Railway.
The Clyde Steamship Company.
The South Carolina and Georgia Railroad.
The Georgia Railroad.
The Central of Georgia Railway.
The Ocean Steamship Company.
The Mallory Steamship Company.
The Plant System.
The Louisville and Nashville Railroad.
The New Orleans and Northeastern Railroad.
The Mobile and Ohio Railroad.
The Mobile and Birmingham Railroad.
The Illinois Central Railroad.
The Kansas City, Memphis and Birmingham Railroad.
The Memphis and Charleston Railroad.
The Alabama Great Southern Railroad.
The Nashville, Chattanooga and St. Louis Railroad.
The Cincin'ati, New Orleans and Texas Pacific Railroad, and The Western and Atlantic Railroad.

6. Q. State whether or not your railroad, namely, the Central of Georgia Railway Company, and its connections actually and actively compete for the carriage of freight of the various clas'es to Atlanta. If so, from what cities?

A. Yes, sir; from the Eastern seaboard and interior cities and from the Southern seaboard, particularly Savannah and Jacksonville.

224 7. Q. Does your railroad or its connection have agents at said cities to solicit said freight for transportation to Atlanta?

A. Yes, sir.

8. Q. Does your railroad or its connections advertise at said cities for the transportation of said freights to Atlanta?

A. Yes, sir.

9. Q. State whether competition between carriers, whether by rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. In my opinion it continually and necessarily depresses rate.

10. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not think I know of anything else.

Cross-examination by Mr. SHAVER:

1. Q. I notice, in answering the direct interrogatories propounded to you, you read your answers from a manuscript. How long ago did you prepare those answers?

A. The interrogatories were received on June 8 and the answers prepared on June 17.

2. Q. Do not the Atlanta merchants trade at Marietta, Acworth, Cartersville, Kingston, Adairsville, Calhoun, and in adjacent territory in competition with the local merchants at those points?

A. I think they sell goods to merchants at those points as well as receiving trade from citizens through their Atlanta houses.

3. Q. If the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta were made no higher than the rates to Atlanta, would not this benefit the local merchants at those intermediate points in their competition with the Atlanta merchants?

A. I should think so.

4. Q. Where two localities are so situated with reference to each other that they compete for busines' in the same territory, does not a system of rates that is preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

225 A. All of the conditions being the same, I should say they could, unquestionably.

5. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that place?

A. Not necessarily, I think.

6. Q. Is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at such point and the increase of its population?

A. It would be on raw material into a point where it is proposed to manufacture goods, and also true of manufactured products from such points. I do not think that a reduction in dry goods to a point such as is described above, use that as an illustration—taking either one of these points as an illustration—I do not think that a reduction in the rates on dry goods or on soap or on sugar would increase the consumption of those articles at those points in any degree at all. I do not believe it would bring about immigration or removal of parties from other sections to those points.

7. Q. Do not transportation rates enter into and affect the price of goods?

A. Yes, sir; generally.

8. Q. Do not lower rates therefore tend to bring about lower prices of goods?

A. On heavy commodities where prices are close a small difference in freight rates would affect the selling price, but in dry goods, or boots or shoes, or other traffic of that class, I do not think that a material difference in rates of freight would cause a variation in selling price. I do not believe if a man were paying $1 a hundred pounds on boots and shoes to a given point and sold his shoes at $1.25 a pair that if his rates were reduced to 85 . . . . . he would sell those shoes for less than $1.25.

9. Q. Might not the reduction in rates, which would not appreciably benefit an individual consumer, be of great benefit to the merchants who sells goods to a large number of consumers?

A. The seller would undoubtedly put an additional profit in his pocket.

10. Q. Does not the prosperity of a locality generally depend to a very great extent upon the prosperity of its merchants and business men?

A. I should say so.

226 11. Q. Is it not the tendency of lower prices of goods to bring these goods within the reach of a greater number of people and thus increase the consumption of such goods?

A. I do not think that is always the rule, by any means.

12. Q. Is it true as a general rule?

A. I think not; I think it is exceptional.

13. Q. Do not people lay in supplies in proportion to their means?

A. That depends a good deal on the individual.

14. Q. In your direct examination you mentioned a number of lines that might be formed and which you said competed for traffic between Cincinnati and other points and Atlanta. By consent of the carriers, members of such lines, can not also all those lines be formed through to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun by combinations with the Western and Atlantic Railroad as the terminal carrier?

A. I imagine so.

15. Q. What other road is Kingston situated upon besides the Western and Atlantic?

A. A branch of the Western and Atlantic or, more properly, the Rome Railroad, which is operated by the Western and Atlantic Railroad.

16. Q. Does not that Rome Railroad make connection at Rome with other roads; and if so, what roads?

A. I think not. You mean does it make any through connection, have traffic relation with such roads?

17. Q. I did not mean that.

A. I do not know whether it makes a physical connection or not. I do not think that it has any traffic arrangements.

18. Q. Are there not other roads reaching Rome?

A. Yes, sir.

19. Q. What are they?

A. The Chattanooga, Rome and Columbus and the Southern Railway.

20. Q. What other roads reaches Cartersville besides the Western and Atlantic?

A. The East and West Road of Alabama.

21. Q. Between the terminus of that road at Pell City and at Cartersville, does not that road meet or cross other lines of railway?

A. Yes, sir; it crosses the Chattanooga, Rome and Columbus Railroad at Cedartown; the Southern Railway at Rockmart; and I think also the Alabama Mineral Railroad at Dukes; I think it also connects with the Southern Railway at Piedmont. The lines are not very fresh in my mind, but that is my recollection of the junction points.

227 22. Q. Is not traffic transported from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through bills of lading and naming through rates to those points issued by the initial carrier at Cincinnati?

A. I cannot answer that from my own knowledge, but it is a general practice in the transportation of traffic to other local points in the South, and I have no doubt that it is also true at these stations.

23. Q. Are the rates involved in this case from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, in your opinion, reasonable in and of themselves?

A. If they are made on the bases prescribed in my direct interrogatory, I consider that they are.

24. Q. What is that basis?

A. Not exceeding the lowest combination.

25. Q. Of through and local rates?

A. Yes, sir.

26. Q. Are the lower rates from Cincinnati for the long hauls to those points to Atlanta also, in your opinion, reasonable in and of themselves?

A. Yes, sir.

27. Q. Do those rates pay the carrier anything in excess of the cost of the service of transportation?

A. The Atlanta rates?

28. Yes, sir.

A. I am of the opinion that they do.

29. Q. Is a rate, in your opinion, a reasonable rate which does not give the carrier a proper remuneration over and above the cost of the service of the carriage?

A. That depends on what we call a proper remuneration above the cost of the carriage. It seems to me there are a great many cases where a rate would be reasonable if it was above the cost of carriage to any extent, dependent largely on the movement of traffic in different directions.

30. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first ascertaining the cost or the expense of the service of carriage?

A. The cost of the carriage is an uncertain quantity, varying almost with every class of freight and varying on the same classes of freight at different times and moving in different directions.

31. Q. I understand that. But that is not an answer to my question. My question is, Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the
228 expense of the service of carriage? In other words, can it be ascertained whether a rate pays the carrier a profit without first considering the expense or the cost of carriage?

A. As it is impossible to ascertain the cost of carriage in a great majority of cases, it is difficult to tell whether any particular rate or any particular traffic will pay a profit. We have as a guide the general tariffs. We know what the out-turn is from those tariffs, and we vary from them as necessity requires, and after all, when you come down to rate making on heavy commodities which require low rates of transportation, it is largely a rule of thumb process. By observation and experience we ought to know and try to know whether we will make or lose money on any shipment. If we think we are not going to make money, we will not take it. If we think it pays, we will take it. Whether we always make a profit we do not know.

32. Q. In your opinion, then, it is impossible for the carrier to ascertain whether a given rate is reasonably remunerative?

A. My answer had reference particularly to exceptionally low rates; that is, rates lower than the general standard rates. In cases of this kind, I think, it is frequently impossible to tell whether we will make or lose money by the carriage.

33. Q. Does not the cost or the expense of the service of transportation depend largely on the length of the haul?

A. All other things being equal, I would say that the cost of the haul per mile would decrease as the length of the haul increased. Not in any given ratio, but to some extent at least.

34. Q. Would not the aggregate cost increase as the length of the haul increased, other things being equal?

A. All other things being equal; yes, sir.

35. Q. All other things being equal, is not the consumption of time greater, the greater the length of the haul?

A. Yes, sir.

36. Q. All other things being equal, is not the consumption of fuel greater, the greater the length of the haul?

A. I do not know about the consumption of fuel. I would not like to give an expert opinion as to that, as I do not handle any fuel.

37. Q. All other things being equal, is not the wear and tear on locomotives, cars, track, road-bed, &c., greater, the greater the length of the haul?

A. I think so.

38. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater, the greater the length of the road?

A. Of that I know nothing about at all.

229 39. Q. Other things being equal, does it not require more locomotives and crews for the running of trains on a long road than on a short one?

A. I think that depends a great deal upon how much longer the long road is than the short road.

40. Q. Other things being equal, does not distance add to the cost of building a road; and are not, therefore, the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Yes, sir.

41. Q. Is not a rate under which traffic will move and which is not so high as to divert the traffic to other roads or lines, in your opinion, a reasonable rate?

A. Yes, sir.

42. Q. Are not the rates from Atlanta to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun local rates?

A. That is my understanding.

43. Q. Are not the rates from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, Marietta, and Atlanta local rates?

A. I think so.

44. Q. Are not local rates higher per ton per mile than long through-haul rates?

A. Not always.

45. Q. Is not that the general rule, that the local rates are higher per ton per mile than on the long through haul?

A. You mean local rates on short hauls are higher than through rates on long hauls?

46. Q. Yes, sir.

A. I should say so, all other conditions being the same.

47. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio rivers?

A. 16 years.

48. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in case of competition in transportation to longer distance points?

A. I can think of no such instance at present.

NASHVILLE, TENNESSEE, *July 19, 1897.*

GEORGE R. KNOX, a witness in behalf of the defendants, having been duly sworn, testified as follows:

230 Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. George R. Knox; 52; general freight agent, Nashville, Chattanooga and St. Louis Railway; Nashville, Tenn.

2. Q. How long have you been connected with the railroad freight transportation business in the United States, and in what capacities?

A. I was in the local freight office and in the accounting department for some time before entering the general freight office of the Nashville, Chattanooga and St. Louis Railway. I have been in the general freight

office since March, 1867, as subordinate clerk, chief clerk, assistant general freight agent, and general freight agent.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Atlanta. The enforcement of its order may compel the following reduction in cents per hundred pounds in rates from Cincinnati and other Ohio points to the following stations:

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, cts	2	3	3	3	3	....	6	5	4	3	5	4	8
Adairsville	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston	8	9	7	7	5	....	8	7	5½	5	7	8	9
Cartersville	11	11	9	8	6	1	9	8	6	5	8	9	12
Acworth	17	15	13	10	8	3	11	10	7	6	10	11	17
Marietta	20	17	15	11	9	4	10	10	7	6	8	12	14

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to those stations so as to make up for any loss of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. In my opinion, if the rates to Western & Atlantic stations were reduced to the same as Atlanta it would simply result in the loss of that much revenue to the Western & Atlantic Railroad, for the reason that the volume of business could not be materially increased on account of such reduction, these stations being what might be termed consumptive rather than jobbing or distributing points.

4. Q. Rates and distances from Cincinnati to the following stations on the Western & Atlantic Railroad in December, 1892, were as follows:

231 From Cincinnati to—	Mi.	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E	H	F
Calhoun, Ga	396	109	95	84	71	59	44	34	40	32	27½	56	57	58
Adairsville	405	112	98	86	73	60	45	35	41	32½	28	54	59	57
Kingston	415	115	101	88	75	61	46	36	42	31½	27	55	61	55
Cartersville	426	118	103	90	76	62	47	37	43	34	29	56	62	59
Acworth	439	124	107	94	78	64	49	39	45	35	30	58	64	61
Marietta	453	127	109	96	79	65	50	38	45	35	30	56	65	62

State whether or not in your opinion said rates are just and reasonable or unjust and unreasonable, and give your reasons for any opinion you may express.

A. I consider the rates from Cincinnati to Western and Atlantic Railroad stations just and reasonable. They are made by adding the locals of the Western and Atlantic Railroad from Chattanooga to the rates from Cincinnati to Chattanooga and the rates from Cincinnati to Chattanooga are made the same rate per ton per mile as to Atlanta. The rates from Chattanooga to Western and Atlantic stations are as high as the standard rates fixed by the Georgia railroad commission and are from ten to fifty per cent less than the rates in force on many of the roads within the State of Georgia.

5. Q. State what voice, if any, the Western and Atlantic Railroad has in the making of rates from Cincinnati to Chattanooga?

A. It has none at all.

6. Q. State what transportation lines actually and actively compete for the transportation of freight from Cincinnati to Chattanooga?

A. The Cincinnati, New Orleans, and Texas Pacific Railway and the Louisville and Nashville Railroad in connection with the Nashville, Chattanooga and St. Louis Railways, actually and actively compete for business from Cincinnati to Chattanooga.

And at times business is moved over the Cleveland, Cincinnati, Chicago and St. Louis Railway from Cincinnati, thence the Illinois Central to Memphis and thence the Memphis and Charleston to Chattanooga.

232 7. Q. The rates from Cincinnati to Chattanooga are as follows:

Classes.												
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
70	65	57	47	40	30	20	26	23	19	34	37	38

The distance from Cincinnati to Chattanooga is 336 miles. State whether, in your opinion, said rates are just or unjust, reasonable or unreasonable, and give your reasons for any opinion you may express.

A. The rate from Cincinnati to Chattanooga are just and reasonable for the reason that they do not allow the carriers an exhorbitant revenue for the service performed and are made the same rate per ton per mile as to Atlanta, and the rates compare favorably with the rates to other portions of the South.

8. Q. State what were the proportions received by the different carriers out of the rates from Cincinnati to Atlanta in effect in November, 1892?

A. The proportions received by the different lines out of the rates from Cincinnati to Atlanta are as follows:

	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
C S	75.9	65.2	57.4	48.2	39.7	32.6	19.9	24.8	19.9	17	34	37.6	34
W & A	31.1	26.8	23.6	19.8	16.3	13.4	8.1	10.2	8.1	7	14	15.4	14
Total	107	92	81	68	56	46	28	35	28	24	46	53	48
L & N	50.2	43.1	37.9	31.9	26.2	21.5	13.2	16.4	13.2	11.2	22.5	24.9	22.5
N C & St L	25.7	22.1	19.5	16.3	13.5	11.1	6.7	8.4	6.7	5.8	11.5	12.7	11.5
W & A	31.1	26.8	23.6	19.8	16.3	13.4	8.1	10.2	8.1	7	14	15.4	14
Total	107	92	81	68	56	46	28	35	28	24	46	53	48

9. Q. State what said proportions received by the Western & Atlantic Railroad amounted to in cents per ton per mile on each of the classes?

A. The rates in cents per ton per mile received by the W. & A. Railroad, Chattanooga to Atlanta, out of the Cincinnati to Atlanta rates, are as follows:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
4.51	3.88	3.42	2.87	2.36	1.94	1.17	1.48	1.17	1.01	2.03	2.23	2.03

10. Q. Did the propositions which said Western & Atlantic Railroad received on the different classes of freight shipped from Cincinnati and

other Ohio River points via Chattanooga destined to Atlanta in 1892 exceed the additional cost to said Western & Atlantic Railroad of the movement of said freight?

233 A. Yes, sir; it did.

11. Q. What was the financial condition of the Western & Atlantic Railroad in 1892? Was it such as to enable it to sustain a loss equal to the amount of revenue that was derived by said road carried from Cincinnati and other Ohio River points via Chattanooga destined to Atlanta?

A. The financial condition of the Western & Atlantic Railroad in 1892 was not such as to enable it to sustain a loss equal to the amount of revenue that was received in the transportation of freight shipped from Cincinnati and other Ohio River points via Chattanooga to Atlanta. The operating expenses, maintenance of equipment, and the general expenses, together with the rental and taxes, exceeded the revenues of the Western & Atlantic Railroad in 1892. The receipts were $1,560,320.62. Operating expenses, rental, taxes, and amount expended for steel rails, crossties, new bridges, water stations, etc., amounted to $1,882,533.37.

12. Q. I have shown above the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta. What were the proportions received by the Western & Atlantic Railroad in cents per hundred pounds on each of said classes of freight shipped from Cincinnati and other Ohio River points via Chattanooga destined to each of said stations?

A. The proportions accruing to the Western & Atlantic Railroad in cents per hundred pounds on business from Cincinnati destined to Western & Atlantic stations were as follows:

From Chattanooga to—		1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	(a)	33	30	27	24	19	14	14	14	9	8.5	19	24	18
Adairsville	(b)	36	33	29	26	20	15	15	15	9.5	9	20	26	19
Kingston	(c)	39	36	31	28	21	16	16	16	10	9.5	21	28	20
Cartersville	(d)	42	38	33	29	22	17	17	17	11	10	22	29	21
Acworth	(e)	48	42	37	31	24	19	19	19	12	11	24	31	23

13. Q. What did those proportions amount to in cents per ton per mile on each of said classes to each of said stations?

A. The foregoing proportions amounted to the following in cents per ton per mile:

	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
(a)	11.00	10.00	9.00	8.00	6.33	4.66	4.66	4.66	3.00	2.83	6.33	8.00	12.0
(b)	10.29	9.43	9.29	7.43	5.71	4.29	4.29	4.29	2.71	2.57	5.71	7.42	10.8
(c)	9.75	9.00	7.75	7.00	5.25	4.00	4.00	4.00	2.50	2.37	5.25	7.00	10.0
(d)	9.33	8.44	7.33	6.44	4.88	3.78	3.78	3.78	2.44	2.22	4.88	6.44	9.3
(e)	9.32	8.16	7.18	6.02	4.66	3.69	3.69	3.69	2.33	2.13	4.66	6.02	8.9

14. Q. Please name the various transportation lines, all rail or all water or part rail and part water, that actually and actively competed in 1892 at Atlanta for transportation to that place of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F, whether such freight came from Ohio River points or other sections of the country.

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A. The following, all rail, competed in 1892 for the transportation of freight covered by the numbered and lettered classes to Atlanta from Ohio River points:

The Louisville & Nashville Railroad in connection with the Nashville, Chattanooga & St. Louis Railway to Chattanooga, thence the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Cincinnati, New Orleans & Texas Pacific Railway in connection with the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Louisville & Nashville Railroad in connection with the East Tennessee, Virginia & Georgia Railroad via Jellico.

The Louisville Southern Railroad in connection with the Cincinnati, New Orleans & Texas Pacific Railway and the Western & Atlantic Railroad, the East Tennessee, Virginia & Georgia Railroad, or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Newport News & Mississippi Valley Company in connection with the Kansas City, Memphis & Birmingham Railroad and the Georgia Pacific Railroad.

The Ohio Valley Railroad in connection with the Newport News & Mississippi Valley Company and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Ohio Valley Railroad in connection with the Newport News & Mississippi Valley Company, the Kansas City, Memphis & Birmingham Railroad and the Georgia Pacific Railroad.

The Illinois Central Railroad in connection with the Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Illinois Central Railroad in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or
235 the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Illinois Central Railroad in connection with the Kansas City, Memphis & Birmingham Railroad and the Georgia Pacific Railroad.

The Mobile & Ohio Railroad in connection with the Memphis & Charleston Railroad and the Western & Atlantic Railroad or the East Tennessee, Virginia Railroad or the Georgia Pacific Railroad.

The Mobile & Ohio Railroad in connection with the Kansas City, Memphis & Birmingham Railroad and the Georgia Pacific Railroad.

From Mississippi River crossings:

The Memphis & Charleston Railroad in connection with the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Louisville & Nashville Railroad in connection with the Nashville, Chattanooga & St. Louis Railway and the Western & Atlantic Railroad or the East Tennessee, Virginia & Georgia Railroad or the Central of Georgia Railway.

The Louisville & Nashville Railroad in connection with the Western Railway of Alabama and the Atlanta & West Point Railroad.

The Louisville & Nashville Railroad in connection with the East Tennessee, Virginia & Georgia Railroad.

The Louisville & Nashville Railroad in connection with the Georgia Pacific Railroad.

The Kansas City, Memphis & Birmingham Railroad in connection with the Georgia Pacific Railroad.

The Illinois Central Railroad in connection with the Georgia Pacific Railroad.

The Yazoo & Mississippi Valley Railroad in connection with the Georgia Pacific Railroad.

The Yazoo & Mississippi Valley Railroad in connection with the Alabama Great Southern Railroad or the Georgia Pacific Railroad.

The New Orleans & Northeastern Railroad in connection with the Alabama Great Southern Railroad or the Georgia Pacific Railroad.

The New Orleans & Northeastern Railroad in connection with the Alabama Great Southern Railroad and the Western & Atlantic Railroad.

236 From South Atlantic ports:

The Central of Georgia Railway direct.

The Port Royal & Augusta Railroad in connection with the Georgia Railroad.

The Savannah, Florida & Western Railroad in connection with the Georgia Railroad.

The South Carolina Railroad in connection with the Georgia Railroad.

The Charleston & Savannah Railroad in connection with the Port Royal & Augusta Railroad and the Georgia Railroad.

The Charleston & Savannah Railroad in connection with the Savannah, Florida & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

The Atlantic Coast Line in connection with the Richmond & Danville Railroad.

The Seaboard Air Line direct.

From Virginia cities:

The Seaboard Air Line direct.

The Richmond & Danville direct.

The Norfolk & Western Railroad in connection with the East Tennessee, Virginia & Georgia Railroad.

The Norfolk & Western Railroad in connection with the East Tennessee, Virginia & Georgia Railroad and the Western & Atlantic Railroad.

The Atlantic Coast Line in connection with the Seaboard Air Line.

From Eastern cities, all rail:

The Baltimore & Ohio Railroad in connection with the Richmond & Danville Railroad or the Atlantic Coast Line or the Seaboard Air Line.

The Pennsylvania Railroad in connection with the Richmond & Danville Railroad or the Atlantic Coast Line or the Seaboard Air Line.

The Western Maryland Railroad in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

The Western Maryland Railroad in connection with the Norfolk & Western Railroad, the East Tennessee, Virginia & Georgia Railroad and the Western & Atlantic Railroad.

The Cumberland Valley Railroad in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad and the Western & Atlantic Railroad.

237 The Cumberland Valley Railroad in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

The Philadelphia & Reading Railroad, in connection with the Norfolk & Western Railroad and the East Tennessee, Virginia & Georgia Railroad.

From Eastern cities, rail and water:

Old Dominion Steamship Company, in connection with the Seaboard Air Line, or the Norfolk & Western Railroad, or the Atlantic Coast Line.

The Ocean Steamship Company, in connection with the Central of Georgia Railway.

The Clyde Line, in connection with the South Carolina & Georgia Railroad and the Georgia Railroad.

The Clyde Line, in connection with the Seaboard Air Line, or the Norfolk & Western Railroad, or the Atlantic Coast Line.

The Merchants & Miners' Transportation Company, in connection with the Seaboard Air Line, or the Norfolk & Western Railroad, or the Atlantic Coast Line.

The Merchants & Miners' Transportation Company, in connection with the Central of Georgia Railway.

The Bay Line, in connection with the Seaboard Air Line."

15. Q. File as Exhibits No. 7 in this case a statement giving the following information in relation to the Western and Atlantic Railroad for each year since the lease, to wit:

1. Gross earnings from operation.
2. Operating expenses.
3. Miscellaneous income.
4. Fixed or obligatory charges.
(a) Taxes.
(b) Interest on bonds.
(c) Other charges, interest, etc.
5. Expended on improvements in road and equipment.
6. Total freight revenue.
7. Number of tons carried of freight-earning revenue.
(a) Number of tons received from connecting roads and other carriers.
(b) Number of tons originating on the road.
8. Average distance haul of one ton.
9. Average receipts per ton per mile.
10. Freight earnings per train per mile.

A. I file the same herewith as Exhibit No. 7.

(The statement referred is hereto attached and marked Exhibit Number 7.)

238 16. Q. Are the Louisville and Nashville Railroad, the Nashville, Chattanooga and St. Louis Railway, and the Western and Atlantic Railroads under any common control or management?

A. The Louisville and Nashville Railroad, the Nashville, Chattanooga and St. Louis Railway, and the Western and Atlantic Railroad are not under any common control or management. The Nashville, Chattanooga and St. Louis Railway is the lessee of the Western and Atlantic Railroads.

17. Q. Are the Cincinnati, New Orleans and Texas Pacific Railway and the Western and Atlantic Railroad under any common control or management?

A. They are not.

18. Q. State whether the rate on freight from the Ohio River points to Atlanta are controlled to any, and, if so, to what, extent by competition.

A. Yes, sir; the rate from Ohio River point' to Atlanta are controlled by competition. The rail lines actually engaged in the transportation of freight between Ohio River points and Atlanta has its effects upon the rates, as well as the competition, of markets at Cincinnati and other Ohio River points on the one hand and the Baltimore and other Eastern markets—New York, Boston, etc.—on the other.

19. Q. State whether freight has been, and can be, carried from Cincinnati, Ohio, to Baltimore, Maryland, and other Eastern cities via the trunk lines, thence by independent steamships or sailing vessels to Southern ports and thence to Atlanta by railroads wholly within the State of Georgia, and whether said shipments have been made and can be made without issuing through bills of lading.

A. Freight has been carried from Cincinnati to Baltimore or other Eastern cities, thence by independent sailing vessels to Southern ports and reshipped to interior points in Georgia as far north as Atlanta. But of late years shipment from Cincinnati proper via such routes has not amounted to much. Shipments could be made by this route without issuing through bills of lading. Bills of lading could be issued to the Southern coast ports and then reshipped, or parties could take the bill of lading to Baltimore and make their own arrangements with the sailing vessels and then reship. There is, however, considerable business shipped from points north and west of Cincinnati, via Baltimore and other Eastern ports, to Southern ports and reshipped to the interior, as against the direct line leading from the Ohio River, and at much less rates than charged by the direct rail lines.

239 20. Q. State whether the rates that have been and can be made by the trunk lines from Cincinnati to Baltimore and other Eastern cities, and thence by steamship and sailing vessels, thence by the Georgia Railroad to Atlanta, control the rates to any extent which can be charged by the direct rail lines operating from Cincinnati to Atlanta.

A. The rates as they now stand from Cincinnati to Baltimore in connection with the trunk lines, added to the rates from Baltimore to Savannah—that is, the regularly established steamship rates plus the established rates from the coast to Atlanta—would not cut the rate via the direct line, although such combinations are in a measure considered in fixing the

rates by the direct line, although, as stated in answer to the previous question, there is a large volume of business constantly moving from points north and west of Cincinnati via Baltimore and other Eastern cities and thence via South Atlantic ports, those rates being considerably less than can be made by the direct line through the Ohio River crossings, the rates from points north of the Ohio River being made by adding the rates to the river to the established rates south of the river.

21. Q. State whether competition between carriers, whether by rail or by water, substantially affect the circumstances and conditions under which the transportation of freight is conducted.

A. Yes, sir; competition between carriers, whether all rail or rail and water, affect the circumstances and conditions under which the transportation of freight is conducted.

22. Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, as is sufficient to affect the rate charged by the direct all-rail lines from Cincinnati and other Ohio River points to those stations.

A. No, sir; there is no such competition at Calhoun, Adairsville, Kingston, and Acworth that is sufficient to affect the rate charged by the direct lines from Cincinnati, although at Cartersville and Marietta there is a slight indirect competition, but it is not sufficiently strong to affect rates charged by the direct lines to those points. However, all receive the benefit of the competitive rates up to Chattanooga, plus the locals from Chattanooga.

23. Q. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

240 A. I think these questions and answers have covered the ground quite fully.

Cross-examination by Mr. Shaver:

1. Q. In the event that the Atlanta merchants sell goods at Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun, and in the adjacent territory in competition with the merchants at those intermediate points, would not a reduction in rates to those points, which would make their rates not higher than the Atlanta rates, greatly benefit local merchants at those points in their competition?

A. Only to the extent that it might exclude the Atlanta merchants from such competitions. I think the effect of such an adjustment would be to absolutely exclude the Atlanta merchants, as they would have to pay the same rate into Atlanta as paid to the intermediate points, and in addition pay the local rates from Atlanta back to such intermediate points. The total freight that is paid by the Atlanta merchants would, I believe, eventually exclude them from competing at all with the local merchants.

2. Q. As a general rule, in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at that point?

A. Frequently it does not have that effect. If the rates on flour, corn, hay, and hog products from the West to the Southeast were reduced one-half, I do not think it would have any material effect on the volume of

traffic, nor do I think if the rates on cotton from the Southeast to the seaboard or Eastern cities were cut in half that it would materially affect the volume of that traffic.

3. Q. Which is more beneficial to the business of a locality, high rates or low rates?

A. It depends altogether on the conditions surrounding it. Low rates on agricultural products from the West have proven very injurious to Tennessee farmers. They would be benefited if those rates were made higher.

In my opinion, the opening of many new Western lands and low rates made from the very fertile low-priced fields of the West and Northwest have materially and permanently lowered the values of the farm lands throughout Tennessee.

4. Q. As a general rule, in the absence of exceptional conditions, which are more beneficial to a locality, high rates or low rates?

241 A. Sometimes one and sometimes the other. The manufacturer likes to have low rates to get out with his products. He likes to have high rates into his territory from other territory—into his section on the like character of goods.

5. Q. Do not rates of transportation enter into and affect the price of goods sold by merchants?

A. On some classes the rate of freight does no doubt have a controlling influence on the price; on other classes it has very little to do with the price. Take, for instance, dry goods from New York to any of the Southeastern markets; or boots and shoes. If the rate of freight was cut half in two, the probability is that the consumer would pay the same price for dry goods, boots and shoes that he does now.

6. Q. Would not the merchant be benefitted?

A. The merchant's profit would be somewhat increased.

7. Q. Does not the general prosperity of a locality depend largely on the prosperity of its merchants and business men?

A. It does; and manufacturers, I would add, where it has them.

8. Q. Is not the natural tendency of a material reduction in rates to a given point towards the encouragement of the investment of capital at such point and the increase of its population?

A. That is, the reduction in rates to a point will encourage the investment of capital at that point?

9. Q. I ask, if that is not the natural tendency.

A. No, sir; frequently the reverse.

10. Q. As a general rule, in the absence of exceptionally conditions, is not the natural tendency of a material reduction in rates to a given point toward the encouragement of the investment of capital at such point and the increase of its population?

A. No general answer can be given. In each instance the other conditions and surroundings of the particular town in question would, no doubt, enter largely into the result. Low rates on raw material for manufacturing purposes to a given point are beneficial. But, as heretofore explained, low rates on the manufactured goods to the same point, in competition with the local manufacturer, are injurious.

11. Q. Injurious to the local manufacturer?

A. Yes, sir; injurious to the local manufacturers, and, as explained

above, on agricultural products, low rates from the West to Tennessee points have proved injurious to the Tennessee farmers, while beneficial to the Tennessee consumers. So that low rates to any point while benefitting some classes of population must injure others, and whether
242 or not the entire community is benefitted by it depends on the preponderance or greater number of those who are benefitted or those who are injured.

12. Q. Are not the consumers in all instances benefitted by low rates on articles which they consume?

A. They might be benefitted in securing some of their supplies at slightly lower prices, although, as stated in the case of dry goods and boots and shoes from the East, possibly the consumer might get no benefit, but the jobber or merchant might receive some; but if these consumers should be employes of the manufacturing establishments which were injured by these low rates to their point, a reduction in their wages might more than offset the less price of the articles which they consume.

13. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of those localities and discriminatory against the other benefit the one and injure the other?

A. Yes, sir.

14. Q. You stated that, in your opinion, the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta were just and reasonable. Is it also your opinion that the rates from Cincinnati for freight hauled through those points to Atlanta are just and reasonable?

A. It is.

15. Q. Do those Atlanta rates yield the carrier any revenue in excess of the cost of transportation?

A. They do.

16. Q. Would higher rates be made to Atlanta but for competition?

A. Yes, sir.

17. Q. Is a rate, in your opinion, reasonable which does not yield a carrier a proper remuneration over and above the cost of the service of carriage?

A. No; I do not think it is.

18. Q. Does not the cost or expense of the service of transportation depend largely or to some extent on the length of the haul, other things being equal?

A. That is one of the factors that enters into the cost, but only one.

19. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. It is.

20. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. It is.

243 21. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, roadbed, etc., greater the greater the length of the haul?

A. Yes, sir.

22. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the road?

A. It is.

23. Q. Other things being equal, does it not require more locomotives and cars and crews for running trains on a long road than on a short one?

A. It does.

24. Q. Other things being equal, does not distance add to the cost of building the road, and are not therefore the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Where all things are equal that is true.

25. Q. Is not the expense to the carrier of strictly local hauls greater per ton per mile than on a long through haul?

A. It is.

26. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and the Ohio rivers?

A. Continuously since December, 1865.

27. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory except in cases of competition in transportation to the longer distance point?

A. Well, that word "competition" is a very broad one. Sometimes there is competition of products as well as competition of lines, competition of markets, and letting the word "competition" include all branches of the subject, then I would answer that it has never been made except to meet competition—letting the word "competition" cover all branches of this subject; that is, competition of market, product with product, competition of line and line, and competition of rail with water.

28. Q. Is there competition of markets without there being also competition in transportation?

A. Yes, sir.

29. Q. Well, name an instance.

A. We have right on our own line here two towns selling the same product, competing with each other, shipping over the same road, but being local points. For instance, there is a pile foundry at South
244 Pittsburg, and another at Bridgeport. Both are local to our line, and both of which compete strongly with each other in selling their pipes to the markets of the country.

30. Q. Is there any greater charge for the shorter than the longer haul?

A. No; in that case the charge is the same.

31. Q. I am referring to cases of a greater charge for the shorter haul. Is that greater charge ever made except in the case of competition in transportation, to your personal knowledge?

A. I can not for the moment call to mind such a case, though I am quite sure there have been such cases. There is a case in point from Nashville to Hickman. There is only one line from Nashville to Hickman, and yet the rates to Hickman are less than to points this side of Hickman; there is only one line; that is competition of market with market. Nashville reaches Hickman, Kentucky, over the western division of our road; St. Louis reaches Hickman not only by rail but

also by the Mississippi River boats, at low rates, so that Nashville would be unable to sell any goods in Hickman, and therefore we were forced to make low rates from Nashville to Hickman. They were made to meet the competition at St. Louis and other markets reaching Hickman by river. We do not make as low rates to the other points this side of Hickman, notwithstanding there is only one road between here and Hickman, no other line from here to Hickman. I never heard of freight going from Nashville to Hickman except over our road.

32. Q. Is that not a case of competition between your line to Hickman and the lines from St. Louis to Hickman?

A. It is what I call competition of market with market.

33. Q. Does it not also involve the competition between transportation lines from different markets?

A. Indirectly, it does; yes, that is true. St. Louis has her low rates.

34. Q. Is not a rate under which traffic will move, and which is not so high as to divert the traffic from other roads or lines, in your opinion, a reasonable rate?

A. Yes, sir; I think it is.

35. Q. If the rule that there shall be no greater charge for a shorter than a longer haul over the same line in the same direction, the shorter haul being included in the longer, were observed by all the roads or lines from New York and other Northeastern cities to Nashville, would it be necessary for any one of those roads or lines to depart from this
245 rule in order to retain its share of the traffic and prevent diversion of its traffic to the other roads or lines?

A. It would; that is, it would be necessary to depart from that rule.

36. Q. In your direct examination, you named a number of lines which could be formed from Cincinnati to Chattanooga and also from Cincinnati to Atlanta, which lines from Cincinnati to Atlanta, you stated, competed for business between those cities. Can not all those lines be formed also to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta by combination with the Western and Atlantic Railroad as the terminal carrier?

A. They can.

37. Q. What other road is Cartersville situated on besides the Western and Atlantic?

A. The East and West road of Alabama.

38. Q. Does not that road cross or connect with other roads between Cartersville and its terminus at Pell City?

A. Yes, sir.

39. Q. Name those roads.

A. The East and West connects with the Southern Railway, western system, at Rockmart; with the Chattanooga, Rome and Columbus, at Cedartown; with the Southern Railway, the western system, at Piedmont; with the Alabama Mineral, of the Louisville and Nashville, at Dukes, and again with the western system of the Southern Railway at Pell City, and also with the Birmingham and Atlantic.

40. Q. Can not lines be formed from Cincinnati via those roads to Cartersville?

A. Such a thing might be geographically possible, but hardly commercially possible.

41. Q. What other road is Kingston situated on besides the Western Atlantic?

A. The Rome Railroad, now belonging to the Nashville, Chattanooga and St. Louis Railway.

42. Q. Does not that road connect with other roads at Rome and other points?

A. Yes, sir.

43. Q. With what roads and at what point?

A. With the Southern Railway running both north and south, and with the Chattanooga, Rome and Columbus, running north to Chattanooga and south to Carrollton.

44. Q. Are not the rates by all lines from Cincinnati to Atlanta the same?

A. Yes, sir.

246 45. Q. Are not the rates from Cincinnati to Atlanta now the same as they were when the Southern Railway and Steamship Association was in existence?

A. I think so.

46. Q. Is not Atlanta one of the competitive points—the rates to which were fixed by the Southern Railway and Steamship Association?

A. Yes, sir.

47. Q. Were not rates which were promulgated by the Southern Railway and Steamship Association made by consent of all the carriers who participated in such rates and were members of such association?

A. Well, of course, under the Southern Railway and Steamship Association agreements sometimes rates were made by the consent of all the carriers, and sometimes against the consent of some of them by the board of arbitration. I can not now say as to the Atlanta rates, whether it was by common consent or by arbitration.

48. Q. The roads voluntarily became members of that association, did they not?

A. Yes, sir; voluntarily, in one sense; either that or ruin; either some association or anarchy.

49. Q. Does the Georgia railroad commission attempt to fix through rates on interstate commerce or any proportion of said through rates?

A. Not to my knowledge; but in fixing rates within the State of Georgia from Savannah, New Brunswick, and other seacoast points, as well as from some of their junctions in the northern portion of the State, it does have the effect to a very large extent of fixing a great many interstate rates. For instance, the rate from Chicago to quite a number of points in Georgia have been built up by taking the rates from Chicago to Baltimore and steamer rates to Savannah and Brunswick plus the rates established by the Georgia railroad commission.

50. Q. That was the voluntary action of the lines fixing those rates and not the action of the Georgia railroad commission?

A. No, sir; the rates from Chicago to Baltimore are not made by roads in Georgia, neither are the steamer rates from Baltimore to Savannah or Brunswick; neither are those fixed by the Georgia railroad commission from Savannah to the interior; they made a total which the direct rail lines had to consider and meet. So their voluntary action was merely the meeting of a combination of rates which they had no voice in fixing.

51. Q. Do you consider the Georgia railroad commission rates just and reasonable?

247 A. In many cases I think they are too low. The truth of it is that a very large proportion of the mileage in Georgia has gone through receiverships in the last ten years.

52. Q. Is not traffic transported from Cincinnati over the Louisville and Nashville Railroad to Nashville and thence by the Nashville, Chattanooga and St. Louis Railway to Chattanooga, and thence over the Western and Atlantic Railroad to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through bills of lading issued by the initial carrier at Cincinnati?

A. Yes, sir.

53. Q. Is not traffic transported from Cincinnati via the Cincinnati, New Orleans and Texas Pacific Railway to Chattanooga and thence via the Western and Atlantic Railroad to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through bills of lading issued by the initial carrier at Cincinnati?

A. Yes, sir.

54. Q. Is not such traffic transported under through rates named in such bills of lading?

A. Yes, sir.

NASHVILLE, TENNESSEE, *July 22, 1897.*

GEORGE P. BILES, a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. BAXTER:

1. Q. State your name, age, residence, and occupation.

A. George P. Biles, 40; occupation, general freight agent of the Cincinnati, New Orleans and Texas Pacific Railway Company; residence, Newport, Kentucky.

2. Q. How long have you been connected with the railroad transportation business in the United States, and in what capacities?

A. Since 1884, in various capacities, such as rate clerk; afterwards assistant general freight agent, and since October, 1895, general freight agent.

3. Q. In this case the Interstate Commerce Commission ordered the defendants to desist from charging for the transportation of like kind of property from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, more than to Atlanta. The enforcement of its order may compel

248 the following reductions in cents per hundred pounds in rates from Cincinnati and other Ohio River points to the following stations:

	Classes.												
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, cts	2	3	3	3	3	....	6	5	4	3	5	4	8
Adairsville	5	6	5	5	4	....	7	6	4½	4	6	6	9
Kingston	8	9	7	7	5	....	8	7	5½	3	7	8	7
Cartersville	11	11	9	8	6	1	9	8	6	5	8	9	11½
Acworth	17	15	13	10	8	3	11	10	7	6	10	11	13
Marietta	20	17	15	11	9	4	10	10	7	6	8	12	14

State what in your opinion would be the effect of such reductions in said rates as to increasing the traffic to those stations as to make up for any loss of revenue that might otherwise result, and give your reasons for any opinion you may express.

A. If the freight rates were reduced from Cincinnati to Calhoun, etc., it would not, in my opinion, have the effect of increasing or building up traffic at those points to any appreciable extent. My reason for this opinion is that a reduction in rates would have the effect of materially increasing the consumption of articles used at those points and in adjacent territories. The amount of business done at those points is not of great volume because of the limited population.

4. Q. Rates and distances from Cincinnati to the following stations on the Western & Atlantic Railroad in December, 1892, were as follows:

From Cincinnati to—	Mi.	1.	2	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
Calhoun, Ga	396	109	95	84	71	59	44	34	49	32	27½	53	57	36
Adairsville	405	112	98	86	73	60	45	35	41	32½	28	54	59	37
Kingston	415	115	101	88	75	61	46	36	42	31½	27	55	61	35
Cartersville	426	118	103	90	76	62	47	37	43	34	29	56	62	38
Acworth	439	124	107	94	78	64	49	39	45	35	30	58	64	40
Marietta	453	127	109	96	79	65	50	38	45	35	30	56	65	42

State whether or not in your opinion said rates are just and reasonable or unjust and unreasonable, and give your reasons for any opinion you may express.

249 A. In my opinion, the rate from Cincinnati to Calhoun, etc., are just and reasonable within themselves. My reason for this opinion is that the rates from and to the points named are relatively in line with the rates existing from Cincinnati to other points similarly located in that section of the country.

5. Q. State what transportation lines actually and actively compete for the transportation of traffic from Cincinnati to Chattanooga.

A. The Cincinnati, New Orleans and Texas Pacific Railway Company and the Louisville and Nashville Railway.

6. Q. The rates from Cincinnati to Chattanooga are follows:

[Classes.—Rates in cents per hundred pounds.]

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
76	65	57	47	40	30	20	26	23	19	34	33	38

The distance from Cincinnati to Chattanooga is 326 miles. State whether, in your opinion, said rates are just or unjust, reasonable or unreasonable, and give your reason for any opinion you may express.

A. In my opinion, the rates from Cincinnati to Chattanooga are just and reasonable within themselves. My reason for this opinion is that said rates are relatively in line with existing rates from Cincinnati to other competitive points in that section of the country.

7. Q. Name the various transportation lines, all rail or all water, or part rail and part water, that actually and actively competed in 1892 and now compete, as well from Ohio River points as from other sections of

the country, for transportation to Atlanta, of freight classified as 1, 2, 3, 4, 5, 6, A, B, C, D, E, H, and F.

A. The following lines from the Ohio River competed in 1892 and now compete for the transportation of freight classified under classes 1 to 6, inclusive, and A, B, etc., to Atlanta, Georgia.

From Cincinnati, Ohio:

Cincinnati, New Orleans and Texas Pacific Railway.

Louisville and Nashville Railroad.

From Louisville, Kentucky:

Louisville and Nashville Railroad.

In 1892, Louisville Southern Railroad, now known as the Southern Railway in Kentucky.

In 1892, Chesapeake, Ohio and Southwestern Railroad, now known as the Illinois Central Railroad (Louisville Division).

From Evansville, Indiana:

Louisville and Nashville Railroad.

Ohio Valley Railway.

From Owen'boro, Kentucky:

Louisville and Nashville Railroad.

In 1892, Louisville, St. Louis and Texas Railroad, now known as Louisville, Henderson and St. Louis Railroad.

From Henderson, Kentucky:

Louisville and Nashville Railroad.

Ohio Valley Railway.

From Paducah, Kentucky:

In 1892, Chesapeake, Ohio and Southwestern Railroad, now known as Illinois Central Railroad (Louisville Division).

In 1892, Paducah, Tennessee and Alabama Railroad, now known as Nashville, Chattanooga and St. Louis Railway.

From Cairo, Illinois:

Illinois Central Railroad.

Mobile and Ohio Railroad.

I am unable to enumerate all the lines from the various sections of the country other than Ohio River points that actively competed in 1892 and do now compete for traffic in the numbered and lettered classes to Atlanta, Georgia, nor can I give the names of all of the cities in the country from which freight is now forwarded and was in 1892 shipped to Atlanta. There is nothing now, nor was there in 1892, to prevent the movement of freight of all descriptions from cities located on the Mississippi and Ohio rivers, nor from cities in various States north and west of said rivers, nor from cities in the Eastern States, nor from cities in the Southern States, including the South Atlantic coast and the Gulf ports.

8. Q. State whether or not the Cincinnati, New Orleans and Texas Pacific Railway and its connections actually and actively compete for traffic from Cincinnati and from points in the Northern and Northwestern States to Atlanta, Georgia?

A. The Cincinnati, New Orleans and Texas Pacific Railway and its connections actually and actively compete for traffic from Cincinnati and from points in Northern and Northwestern States to Atlanta, Georgia. The Cincinnati, New Orleans and Texas Pacific Railway Company also

compete for traffic from Louisville and central Kentucky points to Atlanta, Georgia.

9. Q. Does said railway and its connections have agents at said cities to solicit said freight for transportation to Atlanta?

A. The Cincinnati, New Orleans and Texas Pacific Railway
251 Company and its connections have agents at the various points for the purpose of soliciting freight for their respective lines for Atlanta. The Cincinnati, New Orleans and Texas Pacific Railway Company has resident agents at Cincinnati, Ohio; Lexington, Kentucky; and Chicago, Illinois; and also employs soliciting agents whose duty it is to travel throughout the States of Pennsylvania, Ohio, Michigan, Illinois, Kentucky, and Indiana in the solicitation of freight from the various cities and towns in said States for Atlanta, Georgia.

10. Q. Does said railway and its connections advertise at said cities for the transportation of said freight to Atlanta?

A. The Cincinnati, New Orleans and Texas Pacific Railway Company publishes tariff rates, copies of which are on file in the Cincinnati, Lexington, and Chicago offices for public inspection. Copies of said tariffs are distributed to the shippers and the railroad agents in the different towns and cities in the States of Pennsylvania, Ohio, Michigan, Indiana, Illinois, and Kentucky.

11. Q. Explain the basis of making rates from Boston, New York, Philadelphia, and Baltimore to Atlanta. Are the rates which are fixed by the Georgia railroad commission from the Georgia seacoast to Atlanta taken into consideration?

A. The rate from Boston, New York, Philadelphia, and Baltimore, to Atlanta, Georgia, are made fixed differentials above the rates from said Eastern cities to Augusta, Georgia. Water competition from Eastern cities to Augusta establishes the all-rail rates from and to said points, and therefore water competition from Eastern cities to Augusta is a factor in the construction of rates from Eastern cities to Atlanta. The water-transportation rates from Eastern ports to Savannah, Georgia, plus the rates of the Georgia railroad commission, are also considered in fixing the all-rail and water rates from the said Eastern points to Atlanta.

12. Q. State whether the rates on freight from Ohio River points to Atlanta are controlled to any, and if so to what, extent by competition.

A. The rates on freight from Cincinnati to Atlanta are controlled to a very great extent by competition. The rates from Cincinnati and other Western points to Atlanta are to a large extent governed or controlled by the rates on the same classes of freight from Eastern shipping points, and shippers at Cincinnati, as well as other points on the Ohio River and north and west thereof, compete with the shippers in the East who manufacture or handle the same class of goods for shipment to Atlanta.

13. Q. State whether competition between carriers, whether by
252 rail or by water, substantially affects the circumstances and conditions under which the transportation of freight is conducted.

A. In my opinion competition between carriers, either by rail or by water, substantially affects directly and indirectly, in a number of ways, the circumstances and conditions under which the transportation of freight is conducted. For example, when two or more rail lines compete with each other for freight traffic from and to certain points, one of the

lines may inaugurate a special fast-train service for the handling of business with a view of securing the bulk of the movement. Said action would ultimately force its competitors to do likewise in order to secure some of the freight, and at an additional cost which such quick service would bring about.

14. Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, Georgia, as is sufficient to affect the rates charged by the direct rail lines from Cincinnati and other Ohio River points to those stations.

A. There is no such competition at Calhoun, &c., except to the extent as competition between two or more carriers may exist at Chattanooga and to Atlanta, which points are used for constructing rates from Cincinnati and other Ohio River points to the local stations of the Western and Atlantic Railroad. Of course, any reduction which took place in the rate from Cincinnati and other Ohio River points to Chattanooga or Atlanta would bring about relative reductions in rates from said Ohio River points to Western and Atlantic stations. In other words, such local stations would have the same local benefit or the same relative reduction in rates as Atlanta and Chattanooga.

15. Q. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

A. I do not think there is anything further that I can say in regard to this.

Cross-examination by Mr. SHAVER:

1. Q. I notice that in answering the direct interrogatories propounded to you, you read from a manuscript before you. How long ago did you prepare these answers?

A. The answers in this case were prepared June 22.

253 2. Q. Did you have copies of the interrogatories when you prepared this answer?

A. Yes, sir.

3. Q. In the event that merchants at Atlanta sell goods at Marietta, Cartersville, Acworth, Kingston, Adairsville, and Calhoun or any of those points and in the territory adjacent in competition with the local merchants at those points, would not a reduction in the rate from Cincinnati to those points so as to make their rates not higher than the Atlanta rates greatly benefit the local merchants at those points in that competition?

A. It might have the effect of benefitting the local merchants to some extent.

4. Q. Does not the prosperity and growth of a locality depend largely or to some extent on the prosperity of its merchants and business men?

A. Well, that depends upon circumstances. It would be reasonable to suppose, I imagine, that if the merchants were tolerably successful that it would have some influence on the community in some cases, but not in all cases.

5. Q. As a general rule, in the absence of exceptional conditions, is

not the natural tendency of a material reduction in rates to a given point towards improving and increasing the business at such point?

A. Not necessarily.

6. Q. My question was, as a general rule and in the absence of exceptional conditions, is not the natural tendency of a material reduction in rates towards improving and increasing the business of that point?

A. Well, that again depends on circumstances. Probably in limited cases it might have some general improvement, but I venture to say that to a large number of towns a general reduction in the rates would have no material effect. The transportation rates must be of such nature as to enable the carrier to give good service to these particular points. If the rates are reduced to a basis which might be only reasonably remunerative and in some cases hardly remunerative, why, it appears to me that the carriers would not be as anxious, probably, to give as effective services, whereas if the rates were fair it would enable them to give fairly good services, and at the same time, in the building up of a community the railroad companies and the carriers themselves are a very important factor.

7. Q. You say that in the building up of a community railroads and carriers are a very important factor. Do not therefore the rates of transportation established by carriers have some effect in building up a community?

254 A. That depends, again. In a large number of cases in the South a reduction in the rates would scarcely have any effect whatever. As I said before, it does not follow that because transportation rates may be reduced that it would result in bringing about a new state of affairs to any marked degree.

8. Q. Where two localities are so situated with reference to each other that they compete for business in the same territory, does not a system of rates which is preferential to one of these localities and discriminatory against the other benefit the one and injure the other?

A. Well, if you are speaking of localities as sections of the country, I think probably that might have some effect.

9. Q. Do not the rates of transportation affect and enter into prices of goods on which those rates are charged?

A. Yes, sir; in some cases, but in a large number of cases the transportation rates do not affect the price of the articles that are sold over the counter in the store of a retail merchant.

10. Q. In this case, where you state the rates do not affect the price of the article sold over the counter to the consumer, do they not affect the cost of the article to the merchant?

A. Yes, sir. It affects the cost of the article to the merchant, but the consumer does not get the benefit. As a rule, if any reduction is made in the transportation rates, why, the merchants get the benefit of it and not the consumer.

11. Q. Do not lower prices of goods tend to bring the goods within the reach of a greater number of people and thus increase the consumption of such goods?

A. There may be some truth in that, but transportation rates would not have that effect, because transportation rates are made per hundred pounds, whereas the articles, as a rule, are sold by weight or by measure-

ment. Therefore a reduction of a few cents per hundred pounds would not bring about any reduction or change in the retail price of those articles.

12. Q. Does not the prosperity of a road depend more upon the prosperity of the local stations along its entire line than on that of a few widely separated trade centers or basing points?

A. A great many of the carriers have practically no local business. They have to depend on their through business. Other carriers have a fair local business, and of course a percentage of the gross earnings is due to local traffic. I believe that a great many of the carriers make special efforts to get people to emigrate. That is being done all over the South with sometimes satisfactory results, and others fail to carry their point in this respect.

255 13. Q. Would not a system of rates which would tend to build up business at the local stations along the entire line of the road, contribute more to the prosperity of a road than a system which discriminates against such localities in favor of widely separated trade centers or basings points?

A. That is a difficult question to answer. It depends entirely upon the circumstances and conditions forced. My experience is that reduced rates that have been or may be put in effect at local stations do not bring about satisfactory results; that is, it does not bring business there. People are not there and they do not go there, and it does not matter what rates you may establish, whether it is one dollar per hundred or fifty cent' per hundred. It has no effect whatever.

14. Q. That is not an answer to my question. My question was whether a system of rates which would build up business at local stations along the entire line of the road would not conduce more to the prosperity of the road than a system which builds up widely separated trade centers or basing points at the expense of the intermediate points or territories.

A. You say a system of rates which would build up. I do not know that any system of rates could be put in effect which would build up business of the local points as against the trade centers that you mention. I will say in explanation of that, that so far as the Cincinnati, New Orleans and Texas Pacific Railway Company is concerned, it does not charge higher rates to intermediate points in Tennessee than at Chattanooga, Tennessee. But it has not had the effect of increasing the local business of these points, and that has not been a question of one year or two years. I have not seen any remarkable—in fact, I have not seen any—increase in business, and so far as my knowledge goes I do not believe that the reduction to the local stations, which may be practically the same as to these trade centers, which would bring about what you may term a general marked improvement at these local stations. People flock to these trade centres all the time. They do not care to get off in the country.

15. Q. You said that the Cincinnati, New Orleans and Texas Pacific Railway Company makes no greater charge for the shorter than the longer haul at any point on its lines between Cincinnati and Chattanooga. Does that road meet competition at Chattanooga?

A. Yes, sir; in transportation from Cincinnati.

16. Q. Does it not come in competition with the Louisville and Nashville Railroad and the Nashville, Chattanooga and St. Louis Railway in transportation between Cincinnati and Chattanooga?

A. Yes, sir.

256 17. Q. You stated in your direct examination that the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta were just and reasonable in and of themselves. Is it also your opinion that the lower rates for the longer hauls through those points to Atlanta are just and reasonable in and of themselves?

A. I think so.

18. Q. Would higher rates be charged to Atlanta but for competition?

A. Undoubtedly.

19. Q. Do those rates to Atlanta yield the carrier any revenue in excess of the cost of the service of transportation?

A. I think so.

20. Q. Is a rate, in your opinion, reasonable in and of itself which does not yield a carrier a proper remuneration over and above the cost of the service of carriage?

A. I should say not.

21. Q. Can it be ascertained whether a rate is reasonably remunerative to the carrier without first considering the cost or the expense of the service of carriage?

A. That is a very hard matter to determine. It is a very difficult matter to decide or to fix your rate as compared with the cost of service of operation. There are so many conditions surrounding this rate situation in regard to that, that it is a very difficult thing to form.

22. Q. Can it be ascertained whether a rate yield to the carrier an income over and above the cost of the service of carriage without first ascertaining the cost of that service?

A. I think myself that that depends somewhat upon experience. If a new railroad is opened up, it has to fix its rates, we will say, to local points, to enable that carrier to meet the cost of operation. Now, the cost of operation has not been fixed, so therefore the rates will have to be fixed by the management as they will feel will bring about the desired result—I mean from a revenue standpoint—and which will meet all the expenses. On the other hand, again, these rates may not be high enough to meet these expenses.

23. Q. Does not the cost of the expense of the service of transportation depend largely, or to some extent, on the length of the haul, other things being equal?

A. If you mean by that question, if freight can be handled for a longer distance for a less rate per ton per mile——

24. Q. I did not refer to the rate per ton per mile.

A. You referred to the distance, I understand?

257 25. Q. I will read the question again. (Counsel here reads the question.)

A. I would like for you to explain that to me—what you mean by that.

26. Q. Well, all other things being equal, and the rate of speed being the same, the length of the train being the same, the quantity of the cars being the same, &c., would it not cost more to transport the train twenty miles than ten?

A. It would probably cost more in the aggregate.

27. Q. That is what I mean, in the aggregate; I do not refer to cost per mile.

A. It will cost more to run a train of twenty cars three hundred miles than a train of twenty cars fifty miles.

28. Q. Other things being equal, is not the consumption of time greater the greater the length of the haul?

A. Of course it takes longer for a train to go a hundred miles at the rate of fifty miles per hour than it does to go fifty miles.

29. Q. Other things being equal, is not the consumption of fuel greater the greater the length of the haul?

A. Yes, sir.

30. Q. Other things being equal, is not the wear and tear on locomotives, cars, track, &c., greater the greater the length of the haul?

A. Yes, sir.

31. Q. Other things being equal, is not the cost of keeping the road in repair or in good condition greater the greater the length of the haul?

A. Yes, sir.

32. Q. Does it not require more locomotives and cars and crews for running trains on a long road than on a shorter road?

A. Do you mean in the aggregate or do you mean as compared with the distance? If you mean in the aggregate, I suppose it will cost more for the longer road than for the shorter road.

33. Q. I asked, does it not require more locomotives and cars and crews for running trains on a long road than on a short one?

A. Yes, sir.

34. Q. Other things being equal, does not distance add to the cost of building a road, and are not, therefore, the fixed charges, such as interest on the capital invested, greater the greater the length of the road?

A. Yes, sir.

258 35. Q. Is not the expense to the carrier on strictly local hauls greater per ton per mile than on a long through haul?

A. I should say so.

36. Q. How long have you been engaged in the railroad business in the territory east of the Mississippi and south of the Virginias and Ohio Rivers?

A. Since 1884.

36½. Q. Has the greater charge for the shorter than the longer haul over the same line in the same direction, the shorter haul being included in the longer, ever, to your personal knowledge, been made in that territory, except in cases of competition, to the longer distance point?

A. I do not know that I do.

37. Q. How are the rates from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta made? Are they not combinations of the through rates to Chattanooga or Atlanta plus the local rates on to or back to those intermediate points, as the case may be?

A. Yes, sir.

38. Q. Are not the rates from Chattanooga to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta local rates?

A. Yes, sir.

39. Q. Are not the rates from Atlanta to Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun local rates?

A. They are what are termed local rates of the Western and Atlantic Railroad, if that is what you mean.

40. Q. Are not the rates by all the lines from Cincinnati to Atlanta the same?

A. Yes, sir.

41. Q. Were not the rates in force in 1892 from Cincinnati to Atlanta established by the Southern Railway and Steamship Association?

A. I do not know that I can answer that except to say that from Cincinnati to Atlanta, with probably a few exceptions, the rates have been in effect for a number of years past, and were no doubt established by the association you speak of in line with the rates from other points.

42. Q. Does the Georgia railroad commission establish through rates on interstate commerce or any proportion of such through rates?

A. My understanding is that their jurisdiction is within the State of Georgia.

259 43. Q. In your direct examination you named a number of lines which might be formed and which you stated competed for business from Cincinnati to Atlanta. Can not all those lines be also formed to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta by combinations with the Western and Atlantic Railroad as the terminal carrier?

A. Yes, sir.

44. Q. Is not traffic transported from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta under through bills of lading issued by the initial carrier at Cincinnati and under through rates?

A. Yes, sir.

45. Q. Does not the Cincinnati, New Orleans and Texas Pacific Railway compete with other lines for busines' from Cincinnati to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta?

A. Yes, sir.

46. Q. Do not the agents of the Cincinnati, New Orleans and Texas Pacific Railway Company solicit business from Cincinnati, Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta?

A. Yes, sir.

47. Q. Does not that road publish its through rates to those points as well as to Atlanta?

A. It does.

48. Q. What other road is Cartersville located on besides the Western Atlantic?

A. The East and West Railroad.

49. Q. What roads does that road cross or connect with between Cartersville and Pell City or at Pell City?

A. The road connects with the Southern Railway at Rockmart; with the Chattanooga, Rome and Columbus at Cedartown; the Alabama Mineral Division of the Louisville and Nashville Railroad at Dukes; with the Southern Railway and the Birmingham and Atlantic Railroad at Pell City.

50. Q. Can not lines be formed, by the consent of the carriers, from Cincinnati to Cartersville by combination of some of those roads which connect with or cross the East and West Road?

A. Yes, sir.

51. Q. On what other roads besides the Western and Atlantic Railroad is Kingston located?

A. Kingston, Georgia, seems to be located only on the Western Atlantic Railroad according to this guide.

52. Q. Is it located on the Rome Road?

260 A. I think the We'tesrn and Atlantic controls what is known as the Rome Railroad.

53. Q. But physically it is a distinct road from Rome to Kingston?

A. It is a branch road that runs off from Rome to Kingston and some years ago was operated independently, but I believe it is now operated by the Western and Atlantic Railroad, but under what terms I cannot say.

54. Q. Does it not connect with or meet other lines of railway at Rome and other points?

A. Yes, sir; it connects with other roads entering Rome, Georgia.

55. Q. Will you name them?

A. The Western and Atlantic; the Chattanooga, Rome and Columbus; and the Southern Railway.

56. Q. By consent of the carriers, can not lines be formed from Cincinnati by those roads, or some of them, to Rome and thence to Kingston?

A. I suppose that route could be formed, could be used, but I can not say whether it is or not. The Cincinnati, New Orleans and Texas Pacific does not use it, however.

57. Q. I did not ask you whether they did use it, but whether the lines could not be formed with the consent of the carriers.

A. They could without any doubt, by consent of all the carriers interested.

Redirect examination by Mr. BAXTER:

1. Q. What is the distance from Cincinnati to Chattanooga via the Cincinnati, New Orleans and Texas Pacific Railway Company?

A. 336 miles.

2. Q. How are rates made from Cincinnati to local stations on the Cincinnati, New Orleans and Texas Pacific Railway between Cincinnati and Chattanooga; do they increase with the distance?

A. Yes, sir; according to the distance.

3. Q. At what distance from Cincinnati on the Cincinnati, New Orleans and Texas Pacific Railway Company do the rates which are proportioned to distance become as high from Cincinnati as are rates from Cincinnati to Chattanooga?

A. Well, probably on some classes we may meet the Chattanooga rates at the distance of 125 miles south of Cincinnati. On other classes it may be 140 miles.

261 4. Q. At those local stations on the Cincinnati, New Orleans and Texas Pacific Railway, between Cincinnati and Chattanooga, at which rates are so high as the rates from Cincinnati to Chattanooga, do the merchants at said local stations purchase their goods at Cincinnati or Chattanooga, or do they purchase them in the Eastern markets?

A. The purchases are made at various points. I do not think the merchants at the local stations on the Cincinnati, New Orleans and Texas Pacific Railway buy their goods in the Eastern markets. They

get them from Chattanooga, or from Knoxville, or from Cincinnati, or from Louisville. They do not go so far for markets for their goods.

5. Q. What is the reason that they do not, if you know?

A. Well, I do not know exactly, except they have been in the habit of purchasing their goods from these various nearby trade centers, and probably do not care to make any change.

6. Q. They have established their credit and commercial relations with the cities located near them?

A. Yes, sir. They exchange their freight, you know; they buy from the man in Chattanooga, and they sell him something in return.

Recross-examination by Mr. SHAVER:

1. Q. Do you know of your own personal knowledge that the merchants at these points intermediate between Cincinnati and Chattanooga, which have the same rates as Chattanooga, do not buy their supplies of goods at Cincinnati and Ohio River points or in the East—in New York or other Eastern cities?

A. Well, I have not in view all merchants of the various towns along the line of the road, but I think I am correct in stating that they buy chiefly from Cincinnati, Chattanooga, and Louisville.

2. Q. Chiefly?

A. Yes, sir; of course they buy certain things at points, say, in Ohio, Indiana, and off the Ohio River, like agricultural implements, and something of that sort, but I think their boots and shoes and provisions generally are bought at these other points that I have mentioned.

3. Q. Has the Cincinnati, New Orleans and Texas Pacific Railway Company suffered any great loss *on* material loss from charging rates to those intermediate points not higher than the rates to Chattanooga?

A. Well, we have suffered loss to the extent of the difference between the rates that are now in effect and higher rates which were in effect some years ago.

262 4. Q. How long since the Cincinnati, New Orleans & Texas Pacific Railway Company ceased charging higher rates to those intermediate points than to Chattanooga?

A. It was several years ago, but I can not tell you just exactly when it was.

Redirect examination by Mr. BAXTER:

1. Q. Is not the Cincinnati, New Orleans & Texas Pacific Railway Company in the hands of a receiver?

A. Yes, sir.

I, Frank Lyon, who was agreed upon by counsel for both parties to act as special examiner, as set forth in their foregoing stipulation, do hereby certify that I faithfully and truly and correctly took the testimony of the above-named witnesses in shorthand, and afterwards reduced it to typewriting, and that the foregoing pages contain a full, true, and correct report of the testimony given by each of said witnesses.

This 18th day of August, 1897.

FRANK LYON,

Acting Special Examiner, 1317 F Street NW., Washington, D. C.

EXHIBIT No. 1.—Filed by J. M. Culp, p. 61.

[Proof copy.]

The Southeastern Freight Association.

ARTICLES OF ASSOCIATION OF THE SOUTHEASTERN FREIGHT ASSOCIATION.

PREAMBLE.

For the purpose of interchanging authentic information in regard to the tariffs of the respective parties, members of this association; for consultation and mutual advice in regard to the reasonableness of tariffs, and the publicity of the same, and to aid in fulfilling the purposes of the laws of the States, and of the United States, affecting commerce; especially with the view of preventing illegal and unjust discriminations between persons and localities, or kinds of traffic.

263 The Atlanta & West Point Railroad and Western Railway of Alabama, the Central of Georgia Railway, the Georgia Southern & Florida Railway, the Southern Railway, the Merchants & Miners Transportation Company, the Ocean Steamship Company, the Atlantic Coast Line, the Old Dominion Steamship Company, the Atlanta, Knoxville & Northern Railway, the Florida Central & Peninsular Railroad, the Baltimore, Chesapeake & Richmond Steamboat Company, the Plant System, the Georgia Railroad, the East & West Railroad, the Norfolk & Western Railway, and such other lines as may become parties hereto, hereby agree to form an association to be called the Southeastern Freight Association.

ARTICLE I.

SECTION 1. The territory of this association shall be the territory lying south of the Potomac River to the Virginia, West Virginia State line, thence via said line to Bristol, Tenn., through and including Middlesborough, Ky., Jellico and Harriman Junction, Tenn., to and including Chattanooga, Tenn., and on and south and east of a line from Chattanooga, Tenn., via the Alabama Great Southern Railroad to Birmingham, Ala., thence via Southern Railway to and including Selma, Ala., thence via the Western Railway of Alabama to and including Montgomery, Ala., thence via Plant System through Valdosta, Ga., Jasper, Live Oak, and Lake City, Fla., to Jacksonville, Fla., including points on the line from Montgomery to Jacksonville; thence via the South Atlantic Seaboard to the Potomac River.

SECTION 2. The traffic subject to this association shall be all business for which two or more parties hereto compete, having origin or destination within this territory.

SECTION 3. It is understood that the following traffic is not covered by this association: (1) Traffic between any two points north of the Virginia-North Carolina State line; (3) traffic between points on the designated northern and western boundary lines and points outside of

the defined association territory; (3) local traffic from or through North Atlantic ports to South Atlantic ports, or from South Atlantic ports to or through North Atlantic ports; and (4) coke and bituminous coal.

ARTICLE II.

264 SECTION 1. The association shall be managed by an executive board, which shall have no power to bind the members of the association to observe any regulations in restraint of trade.

ARTICLE III.

SECTION 1. The presidents, vice-presidents, or general managers of the companies members of the association shall constitute the executive board, but may designate another officer, fully empowered to represent them thereon.

SECTION 2. The executive board shall elect its chairman and the chairman of this association, and shall fix his term of service and shall fix the salaries of the chairman and officers. All other expenses of the association shall be subject to its review and approval.

SECTION 3. The executive board or the conference committee shall meet upon the written request of three or more members thereof, or upon call of the chairman.

SECTION 4. Two-thirds of the members of the executive board shall constitute a quorum.

SECTION 5. It shall require the unanimous action of those present to adopt any proposition coming before the executive board.

ARTICLE IV.

SECTION 1. A conference committee shall be constituted, consisting of a duly accredited traffic officer of each company. Each company party hereto reserving always to itself the right to take independent action on any subject, agrees that any change in rates, rules, or regulations affecting the traffic within the territory of this association, proposed to be made by any company, shall be submitted to said conference committee by the company proposing to make such change, for consideration and exchange of views, at least three days before the same shall take effect.

ARTICLE V.

SECTION 1. It shall be the duty of the chairman to discourage a reduction in rates by rebate or drawback or by payment of commissions or by underbilling weights, or by illegal device whatsoever, and upon complaint that such practices are being resorted to, shall make an investigation thereof, reporting the result to the executive board. The chairman and his representatives shall be given access to all records of the companies that pertain to the traffic subject to this association.

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ARTICLE VI.

SECTION 1. The association expenses shall be apportioned fairly between the companies by the executive board, and upon such basis the chairman shall have authority to make draft upon such companies monthly, in advance, to meet the expenses of the association.

ARTICLE VII.

SECTION 1. Any party retiring from this association before the expiration of the time herein fixed, except by unanimous consent, shall not be released from its obligations to contribute its pro rata share towards the expense of maintaining the association during the time agreed upon.

ARTICLE VIII.

SECTION 1. It shall be the duty of the chairman to preside at all meetings of the conference committee, keep the records of the association, including the records of the executive board, to receive from members of the association copies of any joint tariff or rate established by said members covering traffic within the territory of the association, either wholly or in part, and to compile, print, and distribute such tariffs in conformity with the interstate-commerce act and other laws; and to receive, formulate, and distribute statistical information as to the freight traffic of all lines. To this end, members will furnish such reports of freight traffic within the territory of the association as may be required by the chairman.

SECTION 2. The rules governing the filing of freight tariffs with the Interstate Commerce Commission shall apply as to filing all tariffs with the chairman, and the parties hereto shall file with the chairman all tariffs they may issue.

ARTICLE IX.

SECTION 1. Nothing herein shall be so construed as to establish or otherwise affect rates on freight traffic, and it shall be the duty of the executive board to so exercise the power conferred upon it as to discourage and, so far as possible, prevent a violation of the interstate-commerce act, and of any other Federal or State law applicable to commerce, or to the provisions of the charters of any of the parties hereto. The executive board shall report to the Federal and State commissions any
266 reduction in rates by any illegal device whatsoever, in order to prevent unjust discriminations between persons and localities, or kinds of traffic.

ARTICLE X.

SECTION 1. No change shall be made in these articles of association except by consent of each member of the executive board.

ARTICLE XI.

SECTION 1. These articles of association shall become effective May 1st, 1897, and continue in force until May 1st, 1898.

THE CENTRAL OF GEORGIA RAILWAY,
By JOHN M. EGAN, *Vice-President.*
THE OCEAN STEAMSHIP CO.,
By JOHN M. EGAN, *Vice-President.*
MERCHANTS AND MINERS TRANS. CO.,
By J. C. WHITNEY, *Traff. Mgr.*
ATLANTA, KNOXVILLE & NORTHERN RY. CO.,
By E. C. SPALDING, *Vice-President.*
SOUTHERN RWY. CO.,
By W. W. FINLEY, *2nd V. P.*
GEORGIA SOUTHERN & FLORIDA RY. CO.,
By WILLIAM CHECKLEY SHAW, *Vice-President.*
EAST & WEST RAILROAD CO.,
By CHARLES P. BALL, *Genl. Manager.*
THE BALTIMORE, CHESAPEAKE AND RICHMOND ST. BT. CO.,
By REUBEN FOSTER, *President.*
PLANT SYSTEM,
By D. F. JACK, *3rd V. P.*
THE GEORGIA RAILROAD CO.,
By THOMAS K. SCOTT, *Gen. Mgr.*
THE ATLANTIC COAST LINE,
By H. WALTERS, *President.*
THE ATLANTA & WEST POINT RAILROAD CO. AND THE WESTERN RAILWAY OF ALABAMA,
By GEORGE C. SMITH, *Pres. and Genl. Mgr.*

EXHIBIT No. 3.—Filed by J. R. Thompson, p. 63.

THE SOUTHERN STATES FREIGHT ASSOCIATION.

Classified statement of tonnage from points on and beyond the Ohio and Mississippi rivers, and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield, and Riverton, Ala., to Atlanta, Ga., during the year ended March 31st, 1893.

Route—from and via—	Line.	Packing-house products.	Corn.	Wheat.	Oats.	Other grain, hay, and malt.	Milled products of grain.	Agricultural implements, vehicles, machinery, and furniture.	Stoves and hollow ware, special iron articles, except R. R. and bridge iron.	R. R. track material, C. L.; bridge iron, C. L.; stone, C. L.; brick, C. L.; cement, C. L.; salt, C. L.; fertilizer, C. L.	Miscellaneous merchandise.	Total.
Cincinnati, Ohio	L. & N. R. R	939,800	1,028,700	.....	935,200	3,985,300	1,519,300	1,422,100	3,241,600	1,471,900	8,206,000	22,749,900
Louisville, Ky	L. & N. R. R	6,511,600	414,700	.....	1,116,600	108,000	1,349,800	657,100	525,300	9,742,400	8,208,700	28,634,200
Lexington, Ky	L. & N. R. R	.....	.....	.....	.....	.....	36,700	.....	252,500	25,700	3,061,200	3,376,100
Owensboro, Ky	L. & N. R. R	.....	.....	.....	.....	.....	153,700	188,100	900	.....	4,100	346,800
Evansville, Ind	L. & N. R. R	9,951,900	1,050,300	198,100	1,279,500	3,082,800	20,482,700	422,900	67,000	2,546,700	8,544,700	47,626,600
Memphis, Tenn	L. & N. R. R	125,000	.....	.....	1,020,400	106,203	151,400	800	.....	100,000	108,200	1,612,000
New Orleans, La	L. & N. R. R	1,300	.....	.....	3,742,800	.....	87,000	9,200	9,800	715,800	11,839,000	16,404,900
Sheffield, Ala	L. & N. R. R	.....	.....	.....	.....	.....	.....	1,200	.....	.....	2,200	3,400
Total	L. & N. R. R	17,529,600	2,493,700	198,100	8,094,500	7,282,300	23,780,600	2,701,400	4,097,100	14,602,500	39,974,100	120,753,900
Cincinnati, Ohio	C. S. Ry	1,105,600	380,400	.....	551,900	3,567,900	684,400	937,700	2,116,700	677,400	9,571,700	19,603,700
Lexington, Ky	C. S. Ry	.....	.....	.....	.....	.....	149,900	.....	404,500	331,000	2,631,200	3,516,600
Total	C. S. Ry	1,105,600	380,400	.....	551,900	3,567,900	834,300	937,700	2,521,200	1,008,400	12,202,900	23,120,300
Louisville, Ky	L. S. R. R	1,241,600	1,217,200	.....	4,512,200	266,100	434,200	647,600	233,600	1,142,200	2,891,500	12,586,200
Paducah, Ky	N. N. & M. V. Co	.....	.....	.....	.....	21,000	.....	500	.....	.....	167,800	189,300
Evansville, Ind	O. V. Ry	25,700	168,000	.....	32,000	966,400	457,900	47,500	.....	.....	96,200	1,793,700
Paducah, Ky	P. T. & A. R. R	604,200	271,300	.....	.....	951,600	522,200	3,500	120,700	268,400	236,200	2,977,500
Cairo, Ill	I. C. R. R	193,500	2,000	.....	60,600	1,989,900	314,700	.....	129,400	300,100	100,600	3,090,800
Memphis, Tenn	I. C. R. R	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,000	3,000
New Orleans, La	I. C. R. R	.....	.....	.....	486,900	.....	24,000	.....	.....	.....	1,257,000	1,967,900
Total	I. C. R. R	193,500	2,000	.....	547,500	1,989,900	338,700	.....	129,400	300,100	1,360,600	5,061,700
Cairo, Ill	M. & O. R. R	858,300	98,300	.....	36,900	1,258,500	2,669,900	19,100	600	362,900	869,200	6,173,700
Cairo, Ill	N. C. & St. L. Ry	1,253,100	280,100	.....	60,100	6,472,000	1,194,100	111,400	536,000	503,600	1,268,500	11,488,900

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EXHIBIT No. 3.—Filed by J. R. Thompson, p. 63.—THE SOUTHERN STATES FREIGHT ASSOCIATION—Continued.

Classified statement of tonnage from points on and beyond the Ohio and Mississippi rivers, and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield, and Riverton, Ala., to Atlanta, Ga., during the year ended March 31st, 1893.—Continued.

Route—from and via—	Line.	Packing-house products.	Corn.	Wheat.	Oats.	Other grain, hay, and malt.	Milled products of grain.	Agricultural implements, vehicles, machinery, and furniture.	Stoves and hollow ware, special iron articles, except R. R. and bridge iron.	R. R. track material, C. L.; bridge iron, C. L.; stone, C. L.; brick, C. L.; cement, C. L.; salt, C. L.; fertilizer, C. L.	Miscellaneous merchandise.	Total.
Columbus, Ky	N. C. & St. L. Ry	5,228,100	1,215,400	44,500	.....	43,800	5,314,100	33,900	24,300	453,400	2,623,900	14,981,400
Hickman, Ky	N. C. & St. L. Ry	.....	434,700	.....	.....	.....	.....	.....	.....	.....	.....	434,700
Johnsonville, Tenn	N. C. & St. L. Ry	.....	114,900	.....	.....	.....	471,400	.....	.....	.....	.....	586,300
Nashville, Tenn	N. C. & St. L. Ry	1,200	99,800	600	800	38,700	10,112,000	9,600	109,500	342,400	2,541,000	13,255,600
Total	N. C. & St. L. Ry	6,482,400	2,154,900	45,100	60,900	6,554,500	17,091,600	154,900	669,800	1,020,400	6,433,400	40,746,900
Memphis, Tenn	M. & C. R. R	1,672,100	355,000	59,700	4,321,000	735,400	4,720,100	36,600	13,800	1,520,200	1,400,800	14,834,700
Sheffield, Ala	M. & C. R. R	100	26,500	.....	.....	.....	607,600	10,500	.....	.....	34,900	679,600
Total	M. & C. R. R	1,672,200	381,500	59,700	4,321,000	735,400	5,327,700	47,100	13,800	1,520,200	1,435,700	15,514,300
Memphis, Tenn	K. C., M. & B. R. R	1,233,600	274,200	167,500	1,132,400	956,600	3,815,900	9,900	183,100	2,063,500	1,223,000	11,059,700
Huntington, Miss	Y. & M. V. R. R	.....	.....	.....	.....	.....	.....	.....	.....	.....	407,100	407,100
Vicksburg, Miss	Y. & M. V. R. R	.....	.....	.....	.....	.....	.....	.....	.....	.....	300	300
New Orleans, La	Y. & M. V. R. R	.....	.....	.....	.....	.....	.....	.....	.....	.....	150,000	32,200	182,200
Total	Y. & M. V. R. R	.....	.....	.....	.....	.....	.....	.....	.....	.....	150,000	439,600	589,600
Huntington, Miss	G. P. Ry	.....	.....	.....	.....	.....	24,300	.....	22,300	100,000	2,569,800	2,716,400
Vicksburg, Miss	A. & V. Ry	.....	.....	.....	.....	.....	196,600	1,200	.....	.....	98,600	296,400
New Orleans, La	N. O. & N. E. R. R	.....	.....	.....	437,800	.....	.....	.....	.....	594,000	3,853,000	4,884,800
Sheffield, Ala	B. S. & T. R. Ry	.....	.....	.....	.....	.....	.....	1,400	.....	.....	.....	1,400
Alexandria, Va	R. & D. R. R	.....	.....	.....	.....	.....	.....	23,000	6,700	.....	8,600	38,300
Strasburg, Va	R. & D. R. R	.....	.....	.....	.....	.....	.....	.....	2,900	.....	7,700	10,600
Lynchburg, Va	R. & D. R. R	.....	.....	.....	.....	.....	.....	2,200	626,000	.....	8,900	637,100
Richmond, Va	R. & D. R. R	.....	.....	.....	.....	.....	.....	.....	62,200	.....	3,700	65,900
Total	R. & D. R. R	.....	.....	.....	.....	.....	.....	25,200	697,800	.....	28,900	751,900
Grand total	.....	30,946,700	7,451,500	470,400	19,727,100	24,549,600	55,493,900	4,597,000	8,689,400	23,211,600	74,080,500	249,217,700

268 EXHIBIT No. 2.—Filed by J. R. Thompson, p. 6.

THE SOUTHERN STATES FREIGHT ASSOCIATION.

Statement of tonnage from the Eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia to Atlanta, Ga., during the year ended March 31st, 1893.

Route or line, via—	Weight.
Savannah and Central R. R	22,648,821
Savannah and S. F. & W. Ry	1,284,114
Charleston and South Carolina Ry	12,971,428
Portsmouth and Atlantic Coast Line	584,024
Richmond and Atlantic Coast Line, all rail	273,988
Portsmouth and Seaboard Air Line	8,099,031
West Point and Richmond & Piedmont Air Line	11,374,523
Alexandria and Piedmont Air Line	7,162,939
Strasburg and Piedmont Air Line	495,129
Lynchburg and Piedmont Air Line	1,682
Norfolk and Va. Tenn. & Ga. Air Line	3,609,264
Hagerstown and N. & W. R. R	8,757,437
Brunswick and E. T. V. & Ga. Ry	6,448,565
	83,710,945

269 EXHIBIT No. 4.—Filed by J. R. Thompson, p. 67.

Circular Letter No. 13.—Series 1895–96.

The Southern States Freight Association.

AGREEMENT.

This agreement, made this 18th day of October, 1895, by the parties whose signatures are hereby attached, witnesseth that

Whereas, The establishment, publication, and maintenance of tariffs of uniform rates, to prevent unjust discrimination such as neces'arily arises from the irregular and fluctuating rates which inevitably attend the separate and independent action of transportation lines, is important for the protection of the public; and

Whereas, It is deemed to be the mutual advantage of the public and the transportation companies that business in which they have a common interest should be so conducted as to secure a proper correlation of rates, such as will protect the interests of competing carriers and markets without unjust discriminations in favor of or against any city or section; and

Whereas, These objects can be attained by the cooperation on the part of the various independent transportation lines engaged in the traffic of the territory lying south of the Potomac and Ohio rivers and east of the Mississippi River; and

Whereas, Such cooperation is absolutely necessary to a strict compliance with the requirements of the act of Congress entitled "An act to regulate commerce,"

Now, therefore, In order to secure such cooperation among the said transportation lines and to provide means for the prompt adjustment of the differences which may arise between them by separately agreeing to place all traffic common to two or more companies under well-
270 defined rules and regulations which will insure the maintenance of rates, it is mutually agreed as follows:

ARTICLE FIRST.

Title of association.

SECTION 1. The association herein formed shall be styled the Southern States Freight Association.

ARTICLE SECOND.

Officers of association.

SECTION 1. The following officers shall be elected at the annual meeting and shall hold their offices until the next annual meeting, and thereafter until their successors are elected: President, vice-president, commissioner, three arbitrators. A secretary shall be appointed by the commissioner; a secretary to the board of arbitration shall be appointed by that body; both appointments subject to confirmation by the executive board at its first meeting thereafter.

Filling vacancies in elective offices.

SECTION 2. In the event of a vacancy occurring in any elective office the president may fill the vacancy until a general meeting can be convened to elect a successor, and such meeting shall be called by the president to be held within twenty days after the vacancy occurs.

ARTICLE THIRD.

Territorial limit for lines which may be included.

SECTION 1. The territory of the association shall be that territory lying south and west of the Virginias, south of the Ohio and east of the Mississippi rivers. The traffic subject to this agreement shall be all business for which two or more of the parties hereto compete, having origin or destination within this territory. It is understood that the following

Traffic not covered by this agreement.

traffic is not covered by this agreement: (1) Traffic carried between points on the Ohio and Mississippi rivers, (2) traffic between points on the designated northern and western boundary lines and points outside of the defined association territory, and (3) coke and bituminous coal.

271 It is further understood and agreed that traffic to or from a local point on any line shall be considered local to that line throughout its transportation by such line, and so far as that line may be concerned, shall not be subject to this agreement; provided, that rates to or from such local point shall not be made so as to cut the rates fixed under the rules of the association to or from the nearest competing point through which such local traffic may pass; and no line shall make any shrinkage or reduction in the tariff rates, by absorbing expense bills or otherwise, from competing points on such line, the effect of which will be to divert at any junction

Description of the local traffic that is exempted from operations of the agreement.

Protection of local business by prohibiting reductions of rates on same at junction points.

point such local traffic from the line on which it originates; provided, however, that this shall not interfere with milling in transit as may be provided for by the rules of the association.

Respecting routing of bills of lading and initial lines.

It is also further understood and agreed that traffic moving from and to competitive points under bills of lading carrying routing instructions from shippers shall be forwarded by initial lines and waybilled by them with similar routing on original waybills, which routing shall be absolutely observed by all roads parties to the through route, and said routing shall be shown on rebilling by any or all intermediate carriers where rebilling is necessary.

Eastern and Western lines respectively defined.

SECTION 2. For the purposes of this agreement Western lines, as hereinafter referred to, shall be lines parties to this agreement, leading from Cincinnati and from Ohio and Mississippi river crossings west and south thereof to association territory, and Eastern lines, as hereinafter referred to, shall be lines parties to the agreement leading from gateways east of Cincinnati.

Restriction of Western lines making joint rates.

SECTION 3. Western lines shall not make joint rates on traffic passing between points east of a line drawn from Toronto, on the north shore of Lake Ontario, through Lewiston, Niagara Falls, Buffalo, Erie, Oil City, thence via line of the Allegheny Valley Railroad to Pittsburg, thence down the Ohio River, through Wheeling and Parkersburg to Huntington, W. Va., and Ironton, O., or common
272 points adjacent thereto, as hereinafter defined, and points east of a line drawn from Chattanooga, through Birmingham, Selma, and Montgomery, to Pensacola, Fla.

Restriction of Eastern lines in making joint rates.

SECTION 4. Eastern lines shall not make joint rates on traffic between points west of the line described in the preceding section, viz: from Toronto, on the north shore of Lake Ontario, to Ironton, O., or points adjacent thereto as hereinafter defined, and points on or west of a line drawn from Chattanooga through Athens, Augusta, and Macon to Live Oak, Fla.; provided, however, that the Norfolk and Western Railroad may participate in traffic via Kenova at the rates established by the association between points in the territory on and east of its line from Columbus, O., to Kenova, and on and south of the line of the Pittsburg, Cincinnati, Chicago and St. Louis Railway, Columbus, O., to Steubenville, O., and points on and east of the Chattanooga-Pensacola line on and east of the Chat-

Western business in which the Norfolk & Western R. R. may participate.

Permission to Eastern and Western lines as to making common-points rates.

SECTION 5. It is understood that the Eastern and Western lines shall be entitled to compete for traffic passing between points on the Toronto-Pittsburg-Ironton line as before designated, or points common thereto, and all association territory.

A common point is understood to be a point adjacent to the designated line, the rates from which are the same as from points immediately on such line to Eastern cities and

gateways, and also the same as from points on such designated line to Cincinnati and to Louisville.

Methods of mutual protection to Eastern and Western lines.

SECTION 6. For the mutual protection of the various interests the companies parties to this agreement severally agree to carry out the provisions as to Eastern and Western territories, so far as can be legally done by them, respectively, not only by refusing to unite in joint rates as above provided, but, where necessary, by exacting local rates in event of traffic being offered to any member in violation of the provisions of this article.

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ARTICLE FOURTH.

Time and place of holding conventions.

SECTION 1. The representatives of the several companies members of this association shall meet in convention annually on the second Wednesday in June, in the city of New York, or at such other time and place as may be agreed upon by a majority of the members, and special meetings may be called at any time as hereinafter provided.

ARTICLE FIFTH.

Business of conventions.

SECTION 1. The business to be transacted in general convention shall be confined to the election of officers, fixing their salaries, the representation of members on the executive board, and the adjustment of such other matters as can not be properly determined by the executive board or by arbitration.

Unanimous vote required in the election of officers.

Each company a member of the association shall have one vote. The officers of the association shall be elected by unanimous vote, and may be removed by a two-thirds vote of the members.

Representation of members at conventions.

Companies members of the association may be represented in the convention by the president, receiver, vice-president, general manager, traffic manager, superintendent or general freight agent, in person or by proxy, provided such proxy presents to the secretary proper authority for such representation.

In case of more than one nomination being made for any office the election shall be by ballot.

ARTICLE SIXTH.

Companies or lines members of the association entitled to representation on the executive board.

SECTION 1. Such lines or companies as may execute this agreement shall each designate a representative who shall represent them in all matters of business with the other members of the association. The several representatives so designated shall constitute the executive board, of which the commissioner shall be chairman. If any company or

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line which is entitled to a representative fails to appoint one, or if their representative be not present at any meeting of the executive board, such company or line shall be represented by the commissioner.

ARTICLE SEVENTH.

Meetings of executive board.

SECTION 1. The executive board shall meet at the call of the commissioner, whenever and wherever in his judgment it is necessary, or when any three members of the board requests it, but all such calls must state the object of the meeting and the subjects to be acted on by the board.

Commissioner shall represent absent members.

All absent members shall be represented by the commissioner, whose duty it shall be to make himself familiar with their views and interests, so that he can represent them properly; and votes cast by the commissioner for absent members, at any time, on any subject stated in the call, shall have the same force and effect in binding such members as if cast by them in person. Other subjects than those mentioned in the call may be considered and acted on in the meeting of the executive board, but the assent of absent members must be obtained, or a decision by arbitration, before such action becomes binding upon them.

Jurisdiction of executive board.

The executive board shall have jurisdiction over all matters relating to the traffic covered by this agreement, but shall act only by unanimous consent of all its members. In the event of a failure to agree, the question at issue shall be settled by arbitration as hereinafter provided for.

Recognition of the principle of a physical apportionment of business.

SECTION 2. The principal of a physical apportionment of actual traffic, subject to arbitration, shall be recognized in the operations of the association, so far as this can be lawfully done.

Physical apportionment of the cotton business.

In pursuance of this principle, when any member or members of the association interested as an initial line or lines from any competing point in association territory shall desire a physical apportionment of the cotton traffic from such point, such apportionment shall be made, and, in case an
275 agreement can not be reached between the initial lines as to the allotment to each, such allotment shall be made by arbitration.

When, in such apportionment between initial lines, the facilities afforded to any such line by its connections extending to the ports are presented by it for consideration in fixing its allotment the arbitrators shall also consider and determine what proportion of the traffic allotted to such initial line shall be accorded to its connections.

Executive board authorized to make rules and regulations for the apportionment of other actual traffic.

The executive board shall have power from time to time to make rules and regulations and prescribe methods, not inconsistent with this agreement, for the physical apportionment of actual traffic.

ARTICLE EIGHTH.

Executive board may appoint rate committees and other committees.

SECTION 1. The executive board shall appoint a rate committee or rate committees, and at its discretion other committees, either from among its own number, or from

among the officers and agents of the companies members of the association, and may delegate to such committees jurisdiction over matters especially committed to their charge, provided such matters be within the jurisdiction of said board as herein defined.

Authority of rate committee.

SECTION 2. Questions of rates and classifications affecting the traffic covered by this agreement shall be first presented for consideration by the rate committee or committees, and in establishing rates and classifications on all traffic covered by this agreement the rate committee or committees shall keep in view a proper relative adjustment of all rates, and especially on similar articles from the east and the west to common territory. If the rate committee or committees shall omit to make rates on any traffic covered by this agreement, the commissioner shall, as the representative of each member of the association severally appointed for that purpose, have authority to make rates thereon. Such

Commissioner authorized to make rates.

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rates made by the commissioner shall be presented for action of the rate committee or committees at its or their next meeting, but shall remain in effect until changed by the said committee or committees, the executive board, or by arbitration, it being the intention that there shall be properly authenticated tariffs of rates on all traffic subject to this agreement.

Rate committees shall act only by unanimous consent.

SECTION 3. Rate committees shall only act by unanimous consent, and failing to agree, the question at issue shall, upon demand of any member, be referred to the executive board for action at its next meeting, or the votes of members of the executive board may be taken separately and apart by correspondence, and such questions may be submitted direct to arbitration when authorized by a majority of the executive board.

Commissioner shall be ex officio chairman of all rate committees and shall represent absent members.

SECTION 4. The commissioner shall be ex-officio chairman of all rate committees and shall be the medium of communication between such committees and the executive board. Absent members of rate committees shall be represented by the commissioner, as in the case of absent members of executive board. During the interim between the reference of any matter of difference from a rate committee to the executive board, and the final determination of such matter, the commissioner, if he deem it a matter requiring prompt action, shall have authority to decide it temporarily as the representative of each member of the association severally appointed for that purpose, and his decision shall be binding on all parties until changed by the executive board or by arbitration.

Commissioner shall have authority to decide temporarily questions on which rate committees fail to agree.

ARTICLE NINTH.

Executive board authorized to make rules and regulations.

SECTION 1. The executive board, within the jurisdiction of said board as herein defined, shall have authority to make, from time to time, such rules and regulations not inconsist-

ent with this agreement, as may be necessary to secure system in the affairs of the association, and attain the objects for which it is formed.

ARTICLE TENTH.

Duties of the president.

277 SECTION 1. The president shall preside over all general meetings of the association, certify to the record of such meetings, and communicate the proceedings to all the members. He shall call a general meeting of the association whenever he is requested to do so by three members of the executive board, or whenever it is in his judgment necessary.

Duties of the vice president.

SECTION 2. The vice-president, in the absence of the president, shall be empowered to perform all the duties of the president, and in the absence of the vice-president a chairman may be selected from the members of the association.

ARTICLE ELEVENTH.

Method of settling differences by arbitration.

SECTION 1. In case any disagreement shall arise in connection with the business under the jurisdiction of this association, except as provided in article eighth, such disagreement shall first be brought to the attention of the commissioner, by written notice, who shall name a date, which shall be within fifteen days from the serving of such notice, when he will be prepared to consider the matter, and at such time written arguments shall be submitted, and the commissioner's decision shall be rendered within five days thereafter, and this decision shall be effective until changed by arbitration. Should this decision be unsatisfactory to any party involved, arbitration by the board of arbitration of the association shall, upon request, follow, unless a party in interest shall notify the commissioner, in writing, within five days from the rendition of his decision, of its desire to have an arbitration outside the board of arbitration of the association, in which event the commissioner shall notify the other party, and the matter of disagreement shall be arbitrated in the following manner and under the following rules:

Within fifteen days from the rendering of the commissioner's decision, the party or parties aggrieved shall appoint one arbitrator; the party or parties defendant shall appoint a second arbitrator, and these two shall jointly and by
278 agreement appoint the 3rd arbitrator, and the decision of the majority of these arbitrators shall be final. Such arbitrators may be selected from lines members of this association, provided the parties contesting can so agree, in which case only the actual expenses attending such arbitration shall be paid by the association. Failing to agree upon arbitrators members of the lines parties hereto, they may go outside for such arbitrators, and the expenses of such arbitra-

tion shall be met by the association, both in compensation direct to the arbitrators, as well as their personal expenses in connection therewith.

If the parties aggrieved or the parties defendant shall fail to notify the commissioner of the appointment of an arbitrator within fifteen days after the rendition of the commissioner's decision, the commissioner shall appoint the arbitrator for the parties in default.

SECTION. 2. The decisions of the arbitrators, as above provided for, shall be final and conclusive, and the decisions of said board shall become immediately effective when rendered, unless otherwise provided for in the decision.

Each member of the association hereby severally agrees for itself, in advance, to be bound by the action of the arbitrators as a tribunal of its own voluntary selection.

SECTION 3. The board of arbitration of the association shall, from time to time, make or amend rules of procedure for the trial of cases submitted to it and the submission of arguments, as it may deem proper.

ARTICLE TWELFTH.

Duties of the secretary.

SECTION 1. The secretary shall make complete and accurate records of the proceedings of all general meetings of the association, the originals of which shall be preserved in the general office of the association and copies furnished to each member. He shall also act as secretary to the executive board and to all committees herein provided for, and preserve similar records of their proceedings, and perform
279 such other duties as may be assigned him by the commissioner.

ARTICLE THIRTEENTH.

Duties of the commissioner.

SECTION 1. The commissioner shall be the chief executive officer of the association, and as the representative of each of its members severally shall act for them in all matters that come within the jurisdiction of the association, in conformity with the requirements of this contract and the instructions of the executive board and committees herein provided for, but exercising his discretion in all cases which are not provided for either by this agreement or by the executive board and committees acting under its authority and sanction. When directed by the executive board the commissioner shall also take charge of the reports and claims, and appoint such clerks and claim agents as may be necessary, and charge up the expense to the roads interested in the business on an equitable basis, managing the business for the benefit and at the cost of the companies interested. He shall also, as the representative of each member of the association severally appointed for that purpose, reduce the rates whenever, in his judgment, the exigencies of the case shall so demand, to meet

the competition of lines or roads not parties to this agreement and of lines parties to this agreement when such lines fail to maintain the rates as established in the modes provided for in this agreement; and he shall at the same time make, upon request of any interested member, corresponding reductions from other points from which relative rates are made, preserving established differentials. His interpretation of any decision by arbitration shall be binding on all parties until an appeal from the same has been made to arbitration and a decision announced. He shall have, by the special delegation of each member of the association, separately conferred, such authority over the traffic officers and their subordinates and over the accounting depart-
280 ments of the several parties hereto as may be necessary to enforce the terms of this contract relative to the maintenance of rates, and to require information relating to the traffic to be furnished to him in such form or manner as he may deem necessary. He shall have access, either in person or by deputy, to the books, papers, correspondence, etc., etc., of any of the officers, agents, or employees of the several parties hereto that relate to the freight traffic covered by this agreement.

ARTICLE FOURTEENTH.

Accounts of traffic to be kept by the commissioner.

SECTION 1. The commissioner shall keep such accounts of the traffic covered by this agreement and make such reports of the same as may be directed by the executive board.

ARTICLE FIFTEENTH.

Care and disbursement of funds.

SECTION 1. All disbursements of the funds of the association shall be made by the commissioner, who shall give bond with security in such amount as shall be satisfactory to the executive board that he will duly and properly account for all moneys belonging to members of the association which may in any manner come into his possession or under his control. No payment shall be made except on properly receipted vouchers. Said vouchers and all the accounts of the commissioner shall be audited at least quarterly by the executive board, or by such person or persons as it may appoint for that purpose.

ARTICLE SIXTEENTH.

Commissioner to be furnished with copies of manifests.

SECTION 1. The commissioner shall be furnished with copies of all manifests for traffic covered by this agreement, such copies to be forwarded at the time of shipments to which they appertain are made, and shall show the original shipping point and through rates and also the divisions thereof so far as such divisions are provided for in
281 this agreement, and abstracts of all such manifest shall be furnished to the commissioner at the expira-

tion of each month; but it is understood that members of the association shall not have access to any of such manifests or be furnished with the names of consignors or consignees. The tonnage books of every company in the association shall be open at all times to the inspection of the commissioner, or such agents as he may from time to time *to* appoint, for the purpose of enabling him to get a complete record of all traffic covered by this agreement.

ARTICLE SEVENTEENTH.

Copies of rates to be sent to officers or members.

SECTION 1. Copies of all rates that may from time to time be agreed upon or fixed in the manner provided shall be printed and published as the rates of the members of the association, and not as rates of the association itself; and they shall be furnished promptly to the auditors and other officers of the parties to this contract, and they shall see that the rates are enforced in conformity therewith and that no variations are made from such rates or manifests by voucher or otherwise.

ARTICLE EIGHTEENTH.

All-rail rates.

SECTION 1. That all-rail rates between the ports of Boston, Providence, New York, Philadelphia, and Baltimore and points in the territory of the association, except Chattanooga and Knoxville, Tenn., and except points north and west of the Alabama Great Southern Railroad, Chattanooga to Meridian, Miss., and except points on and west of the Mobile and Ohio Railroad, Meridian to Mobile, Ala., both inclusive, shall be higher than the rates by combined water and rail lines by the following differentials:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
12	10	9	8	6	5	5	5	5	5	6	8	10

until changed by agreement or aribitration.

282 Commodities not otherwise specified ..... 5 cents per 100 lbs.

Cotton-seed oil, cotton-seed meal, cotton-seed cake, north bound ..... 2 cents per 100 lbs.

Pig iron, per ton of 2,268 lbs.	Not less than the following figures:
Cast iron, per ton of 2,000 lbs	To Baltimore ..... 25c.
	To Philadelphia, Jersey City, and New York.. 50c.
Scrap iron, per ton of 2,000 lbs	To Boston and Providence ..... 75c.

Cotton, lumber, timber, unmanufactured forest products, naval stores, stone, and marble, rough or sawed, and ores, north bound, NO differential.

Cotton factory products, north bound.. 3 cents per 100 lbs.

To and from points in the territory above excepted, rates by all-rail and by combined water-and-rail lines may be the same.

SECTION 2. That the all-rail port rates thus formed shall be the basis for all-rail rates between points in the territory covered by this association and interior points in the Northern and Eastern States east of the territorial dividing line named in article 3, section 3, of this agreement; except where combinations on any of the all-rail gateways make less, when such combination rates shall apply.

Combined water and rail rates between association territory and interior Eastern territory.

SECTION 3. That the combined water and rail rates between the territory described in section 2 and the territory of the Southern States Freight Association (except Chattanooga and Knoxville, Tenn., points north and west of the Alabama Great Southern Railroad, Chattanooga to Meridian, Miss., and points on and west of the Mobile and Ohio Railroad, Meridian to Mobile, Ala., both inclusive), shall be lower than the all-rail rates by the following differentials, except where combinations on the ports make less totals, when combination rates shall apply via the combined water and rail lines:

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1.	2.	3.	4.	5.	6.	A	B.	C.	D.	E.	H.	F.
4	3	2	2	1	1	1	1	1	1	1	2	2

Commodities not otherwise specified, 1.

Until changed by agreement or arbitration.

Cotton, lumber, timber, unmanufactured forest products, naval stores, stone, marble, rough or sawed, and ores, north bound, NO differential.

To and from points in the territory of the Southern States Freight Association above accepted, the rates by all-rail and by combined water and rail lines may be the same.

Cost of marine risks to be assumed only by the issue of insured bill of lading.

SECTION 4. The combined water and rail lines may insure against marine risks by issuing insured bills of lading, but in no other manner.

Method of changing all-rail and combined water and rail rates.

SECTION 5. All changes in rates in accordance with the preceding sections shall be made as provided by article 8.

All-rail differentials shall not be changed except by arbitration.

SECTION. 6. The above-named differentials as between all-rail lines, and water, or combined water and rail lines, including the eastern territory to which they apply, shall not be changed except by agreement or arbitration, which may at any time be called for by any party to this agreement.

ARTICLE NINETEENTH.

Reports of tonnage and revenue to the commissioner.

SECTION 1. The commissioner, with the approval of the executive board, shall organize such a system for the rendition of tonnage and revenue reports of the traffic covered by this agreement as shall enable the commissioner to be at all times fully informed of the movements thereof, and the observance of rates established therefor, in order that he may detect promptly any violation of rates, and keep each company or line informed of the action of the other companies or lines. For these purposes the commissioner, at his discretion, may appoint agents to examine the books of
284 the several members of the association, and inspectors of the weight and classifications, who shall at all times have access to and be permitted to examine goods. Any losses or damages resulting to initial carriers from the opening of packages by inspectors shall be prorated on the basis of revenue. The expenses of such agents and inspectors shall be distributed among the members as hereinafter set forth. Tonnage and revenue statements shall be rendered monthly to each member of the association, and also annually on the 30th day of April in a report to be made by the commissioner at the expiration of each year, and distributed to the members at least two weeks before the annual meeting.

ARTICLE TWENTIETH.

Differences referred to arbitration.

SECTION 1. All measures necessary to carry out the purposes and provisions of this agreement shall be taken with the consent hereby given of the several parties hereto; and should any question arise upon which they can not agree in relation to the terms of this contract, or to any matter covered by it, is shall, upon the request of any member, be decided by arbitration, as herein provided, it being one of the fu'damental principles of this contract that no party shall take separate action in any matter affecting the interest of one or more of the other parties contrary to the spirit and intent of this contract, and that all differences relating to the establishment, adjustment, and maintenance of rates upon the traffic covered by this contract, shall be adjusted by arbitration.

ARTICLE TWENTY-FIRST.

Reduction of rates forbidden.

SECTION 1. Whenever rates have been fixed by the rate committee, the commissioner, the executive board, or by arbitration, there shall be no reduction from such rates without the consent of the commissioner. No member of the association shall reduce such rates, directly or indi-
285 rectly, by any special rate, rebate or drawback, or by payment of commissions, or by reductions on mani-

fests, or by combination of local rates, or by rebilling, or by underbilling weights, or by any consideration in the way of free or reduced transportion, or in any manner, or by any device whatsoever; nor shall any time contracts be made, even at authorized rates, without the authority of the commissioner.

SECTION 2. It is distinctly understood and agreed that the maintenance of rates, as established under the rules of the association, is of the very essence of this agreement, and the parties hereto severally pledge themselves to maintain them, and to require all their respective connections to maintain such rates, and in the event of any company or line, or its connections—either members or nonmembers of the association—failing to conform to this obligation, the parties hereto severally pledge themselves to abide by and perform such directions as the executive board of the association may prescribe as a remedy; and in such cases the line or lines, members of the association, exchanging or participating in the benefits of business in question, shall not be entitled to vote as to the directions to be given by the executive board.

The parties hereto also severally agree to pay, by sight draft, to be drawn by the commissioner, such fines as may be imposed by arbitration for such failure to comply with such obligation.

It is understood and agreed that the directions to be prescribed by the executive board as remedies to secure the maintenance of rates, may include the expulsion from the association of parties who have been convicted of repeated violations of this agreement, and who have refused to pay the fines imposed.

Remedies to secure maintenance of rates, and fines imposed for failure to maintain them, shall also apply to underbilling weights, free passes, or reduced rates of transportation, time contracts, or any other device whatsoever, calculated to influence or control traffic, in violation of the association agreement.

286 ARTICLE TWENTY-SECOND.

Distribution of the expenses of the association.

SECTION 1. The expenses of the association shall be assessed upon the members pro rata, according to their gross revenue derived from the traffic covered by the agreement, subject to such regulations as may be established by the executive board, each member to advance at the beginning of the year three hundred ($300) dollars towards its proportion of the expenses.

ARTICLE TWENTY-THIRD.

Date effective, and period of validity of the agreement.

SECTION 1. This agreement shall become effective on the twenty-first day of October, 1895, and continue until dissolved by mutual consent. The fiscal year of the association shall commence on April 1st and terminate on March 31st.

Method of considering amendments to the agreement.

SECTION 2. Any member desiring to offer an amendment to the agreement shall present the same in writing to the president, or, in his absence, to the vice-president, who may either call a meeting of the association for its consideration, giving each member thirty days' notice of the amendment proposed and date of meeting, or he may cause a vote to be taken by correspondence. In either event a three-fourths vote of all members shall be necessary for the adoption of such amendment; provided, that no amendment shall be adopted except by unanimous vote of all the members within twelve months from the date of this contract, it being understood that any amendment that has been adopted other than by a unanimous vote after twelve months from the date of this contract shall become effective only after sixty days from its adoption.

Method and conditions under which members may withdraw from the agreement.

SECTION 3. Any member party hereto may withdraw from this agreement upon giving sixty days' notice to the commissioner of his intention to do so, but the giving of such notice shall not relieve such member from the payment of its proportion of the fixed expenses of the association for the current year ending on the 31st of July following, which shall be understood to be the salary of the commissioner, the three arbitrators, and office rent.

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THE WILMINGTON & WELDON R. R. CO.,
By H. WALTERS, *Vice-President.*
ATLANTA & WEST POINT R. R. CO.,
By GEO. C. SMITH, *Prest. & Gen'l Mgr.*
THE WESTERN RAILWAY OF ALA.,
By GEO. C. SMITH, *Prest. & Gen'l Mgr.*
THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA.
By H. M. COMER, *Receiver.*
OCEAN STEAMSHIP CO.,
By H. M. COMER, *Receiver.*
SOUTHERN RAILWAY COMPANY,
By SAMUEL SPENCER, *President.*
THE NORFOLK & WESTERN RAILROAD COMPANY,
By HENRY FINK, *Receiver.*
C., N. O. & T. P. RY.,
S. M. FELTON, *Receiver.*
ALA. GREAT SOUTHERN R. R.,
S. M. FELTON, *Prest.*
THE SEABOARD AIR LINE.
By E. ST. JOHN, *Vice-Prest.*

COLUMBUS SOUTHERN RAILWAY CO.,
By S. F. PARROTT, *Genl. Mgr.*
MERCHANTS & MINERS TRANS. CO.,
By J. C. WHITNEY, *T. M.*
OLD DOMINION S. S. CO.,
By W. L. GUILLAUDEU, *Vice-Prest.*
ALABAMA MID. RY. CO.
BRUNSWICK & WEST. RD. CO.
SAVH. FLA. & WEST. RY. CO.
CHARLESTON & SAVH. RY. CO.,
By R. G. ERWIN, *V.-P. & G. C.*
*THE LOUISVILLE & NASHVILLE R. R. CO.,
(For its line between Birmingham, Ala., and Mobile, Ala., and its Alabama Mineral Division.)
By M. H. SMITH, *President.*
THE WESTERN & ATLANTIC.
By J. W. THOMAS.
EAST & WEST R. R. CO.,
Per CHAS. P. BALL, *Genl. Manager.*
288 THE GEORGIA RAILROAD COMPANY,
By THOS. K. SCOTT, *General Manager.*
THE CLYDE STEAMSHIP COMPANY.
(New York & Charleston line),
By M. H. CLYDE.
G. M. & G. R. R.
C. W. CHEARS, *Genl. Manr. for Receiver.*
GEORGIA SOUTHERN & FLORIDA RAILWAY,
W. B. SPARKS, *General Manager.*
CAPE FEAR & YADKIN VALLEY RY. CO.,
JOHN GILL, *Receiver.*
By J. W. FRY, *General Manager.*
THE BALTIMORE, CHESAPEAKE & RICHMOND STEAMBOAT COMPANY,
By REUBEN FOSTER, *President.*
NEW YORK & TEXAS S. S. CO.,
C. H. MALLORY & CO., *General Agents.*
FLORIDA CENTRAL & PENINSULAR RAILROAD CO.,
By H. R. DUVAL, *President.*

EXHIBIT No. 5.—Filed by J. R. Thompson, p. 67.

Proof.

The Southern Railway and Steamship Association.

AGREEMENT.

This agreement, made this 14th day of July, A. D. 1894, by the parties whose signatures are hereby attached, witnesseth that

Whereas the establishment an' maintenance of tariffs of uniform rates, to prevent unjust discrimination such as necessarily arises from the

*[NOTE.—In a telegram dated October 25th, 1895, Mr. M. H. Smith, president, agreed to include the Pensacola & Atlantic Division in the mileage of the L. N. R. R. Co., placed in the association. File 26547.]

irregular and fluctuating rates which inevitably attend the separate and independent action of transportation lines, it is important for the protection of the public; and

Whereas it is deemed to be the mutual advantage of the public and the transportation companies that business in which they have a common interest should be so conducted as to secure a proper correlation of rates, such as will protect the interests of competing markets without unjust discriminations in favor of or against any city or section; and

289 Whereas these objects can be attained by the cooperation on the part of the various transportation lines engaged in the traffic of the territory south of the Potomac and Ohio rivers and east of the Mississippi River; and

Whereas such cooperation is absolutely necessary to a strict compliance with the requirements of the act of Congress entitled "An act to regulate commerce."

Now, therefore, in order to secure such cooperation among the said transportation lines and to provide means for the prompt adjustment of the differences which may arise between them, by placing the conduct of all traffic common to two or more companies under well-defined rules and regulations which will insure the maintenance of rates, it is mutually agreed as follows:

ARTICLE FIRST.

Title of association.

SECTION 1. The association herein formed shall be styled the Southern Railway & Steamship Association.

ARTICLE SECOND.

Territorial limit for lines which may be included.

SECTION 1. The territory of the association shall be that territory lying south and west of the Virginias, south of the Ohio, and east of the Mississippi rivers. The traffic subject to this agreement shall be all business for which two or more of the parties hereto compete, having origin or destination within this territory. It is understood that the following traffic is not covered by this agreement: (1) Traffic carried between points on the Ohio and Mississippi rivers, (2) traffic between points on the designated northern and western boundary lines and points outside of the defined association territory, and (3) coke and bituminous coal.

Traffic not covered by this agreement.

Description of the local traffic that is exempted from operations of the agreement.

It is further understood and agreed that traffic to or from a local point on any line shall be considered local to that line throughout its transportation by such line, and so far as that line may be concerned, shall not be subject to this agreement; provided, that rates to or from such local point shall not be made so as to cut the rates fixed under the rules of the association to or from the nearest competing point through which such local traffic may pass.

Eastern and Western lines respectively defined.

290 SECTION 2. For the purposes of this agreement, Western lines as hereinafter referred to, shall be lines parties to this agreement, leading from Cincinnati and from Ohio and Mississippi River crossings west and south thereof

to association territory, and Eastern lines as hereinafter referred to shall be lines parties to the agreement leading from gateways east of Cincinnati.

Restriction of Western lines in making joint rates.

SECTION 3. Western lines shall not make joint rates on traffic passing between points east of a line drawn from Toronto, on the north shore of Lake Ontario, through Lewiston, Niagara Falls, Buffalo, Erie, Oil City, thence via line of the Alleghany Valley Railroad to Pittsburgh, thence down the Ohio River through Wheeling and Parkersburg to Huntington, W. Va., and Ironton, O., or common points adjacent thereto, as hereinafter defined, and points east of a line drawn from Chattanooga through Birmingham, Selma, and Montgomery, to Pensacola, Fla.

Restriction of Eastern lines in making joint rates.

SECTION 4. Eastern lines shall not make joint rates on traffic between points west of the line described in the preceding section, viz, from Toronto, on the north shore of Lake Ontario to Ironton, O., or points adjacent thereto as hereinafter defined, and points on or west of a line drawn from Chattanooga through Athens, Augusta, and Macon to Live Oak, Fla. Provided, however, that the Norfolk & Western Railroad may participate in traffic via Kenova at the rates established by the association between points in the territory on the east of its line from Columbus, O., to Kenova, and on the south of the line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, Columbus, O., to Steubenville, O., and points on the east of the Chattanooga, Pensacola line as defined in section 3.

Western business in which the Norfolk & Western R. R. may participate.

Permission to Eastern and Western lines as to making common points rates.

SECTION 5. It is understood that the Eastern and Western lines shall be entitled to compete for traffic passing between points on the Toronto-Pittsburgh-Ironton line, as before designated, or points common thereto, and all association territory.

A common point is understood to be a point adja-
291 cent to the designated line, the rates from which are the same as from points immediately on such same line to Eastern cities and gateways, and also the same as from points on such designated line to Cincinnati and to Louisville.

Methods of mutual protection to Eastern and Western lines.

SECTION 6. For the mutual protection of the various interests, the companies parties to this agreement shall unite in carrying out the provisions as to Eastern and Western territories, so far as can be legally done, not only by refusing to unite in joint rates, as above provided, but where necessary, by exacting local rates, in event of traffic being offered to any member in violation of the provisions of this article.

Manner of fixing proportions of rates from Ohio and Mississippi River crossings and other gateways of the association applicable to traffic from beyond.

SECTION 7. The proportions of rates from Ohio and Mississippi River crossings and other gateways of the association, applicable to traffic shipped from points beyond such crossings and gateways, shall be fixed by the same methods as the rates from such crossings and gateways proper, or as rates between points within the association territory.

ARTICLE THIRD.

Time and place for holding conventions.

SECTION 1. The representatives of the several companies members of this association, shall meet in convention annually, on the second Wednesday in June, in the city of New York, or at such other time and place as may be agreed upon by a majority of the members, and special meetings may be called at any time, as hereinafter provided.

ARTICLE FOURTH.

Business of conventions.

SECTION 1. The business to be transacted in general convention shall be confined to the election of officers, fixing their salaries, the representation of members on the executive board, and the adjustment of such other matters as can not be properly determined by the executive board, with the aid of the board of arbitration.

Each company a member of the association shall
292 have one vote. Two-thirds of the whole vote of the members present shall be required to make action of the convention binding.

Companies members of the association may be represented in the convention by the president, receiver, vice-president, general manager, traffic manager, superintendent, or general freight agent, in person or by proxy, provided such proxy presents to the secretary proper authority for such representation.

In case of more than one nomination being made for any office, the election shall be by ballot.

ARTICLE FIFTH.

Officers of association.

SECTION 1. The following officers shall be elected at the annual meeting, and shall hold their offices until the next annual meeting and thereafter until their successors are elected: President, vice-president, commissioner, three arbitrators. A secretary shall be appointed by the commissioner; a secretary to the board of arbitration shall be appointed by that body, both appointments subject to confirmation by the executive board at its first meeting thereafter.

SECTION 2. In the event of a vacancy occurring in any elective office, the president may fill the vacancy until a general meeting can be convened to elect a successor, and such meeting shall be called by the president to be held within twenty days after the vacancy occurs.

ARTICLE SIXTH.

Companies or lines members of the association entitled to representation on the executive board.

SECTION 1. Such lines or companies as may execute this agreement shall each designate a representative, who shall represent them in all matters of business with the association or its members. The several representatives so desig-

nated shall constitute the executive board, of which the commissioner shall be chairman. If any company or line which is entitled to a representative fails to appoint one, or if their representative be not present at any meeting of the executive board, such company or line shall be represented by the commissioner.

293 ARTICLE SEVENTH.

Meetings of executive board.

SECTION 1. The executive board shall meet at the call of the commissioner, whenever and wherever in his judgment it is necessary, or when any three members of the board request it; but all such calls must state the object of the meeting and the subjects to be acted on by the board.

Commissioner shall represent absent members.

All absent members shall be represented by the commissioner, whose duty it shall be to make himself familiar with their views and interests, so that he can represent them properly; and votes cast by the commissioner for absent members, at any time, on any subject stated in the call, shall have the same force and effect in binding such members as if cast by them in person. Other subjects than those mentioned in the call may be considered and acted on in the meeting of the executive board, but the assent of absent members must be obtained, or a decision of the board of arbitration, before such action becomes binding upon them.

Jurisdiction of executive board.

The executive board shall have jurisdiction over all matters relating to the traffic covered by this agreement, but shall act only by unanimous consent of all its members. In the event of a failure to agree, the question at issue shall be settled by the board of arbitration, as hereinafter provided for.

Recognition of the principle of apportionment of business.

SECTION 2. The principle of an apportionment of business, subject to arbitration, shall be recognized in the operations of the association, so far as this can be lawfully done.

Apportionment of the cotton business.

In pursuance of this principle, when any member or members of the association interested as an initial line or lines from any competing point in association territory shall desire an apportionment of the cotton traffic from such point, such apportionment shall be made; and in case an agreement can not be reached between the initial lines as to the allotment to each, such allotment shall be made by the board of arbitration.

When in such apportionment between initial lines the facilities afforded to any such line by its connections
294 extending to the ports are presented by it for consideration in fixing its allotment, the board of arbitration shall also consider and determine what proportion of the traffic allotted to such initial line shall be accorded to its connections.

Executive board authorized to make rules and regulations for the apportionment of other traffic.

The executive board shall have power from time to time to make rules and regulations and prescribe methods not inconsistent with this agreement for the apportionment of other traffic.

ARTICLE EIGHTH.

Executive board may appoint rate committees and other committees.

SECTION 1. The executive board shall appoint a rate committee or rate committees, and at its discretion other committees, either from among its owner number or from among the officers and agents of the companies members of the association, and may delegate to such committees jurisdiction over matters especially committed to their charge.

Authority of rate committee.

SECTION 2. Questions of rates and classifications affecting the traffic covered by this agreement shall be first presented for consideration by the rate committee, and in establishing rates and classifications on all traffic covered by this agreement the rate committee or committees shall keep in view a proper relative adjustment of all rates, and especially on similar articles from the East and the West to common territory. If the rate committee shall omit to make rates on any traffic covered by this agreement, the commissioner shall have authority to make rates thereon. Such rates made by the commissioner shall be presented for action of the rate committee at its next meeting, but shall remain in effect until changed by said committee, the executive board, or the board of arbitration, it being the intention that there shall be properly authenticated tariffs of rates on all traffic subject to this agreement.

Commissioner authorized to make rates.

Rate committees shall act only by unanimous consent.

SECTION 3. Rate committees shall only act by unanimous consent, and, failing to agree, the question at issue shall, upon demand of any member, be referred to the executive board for action at its next meeting, or the votes of members of the executive board may be taken separately and apart by correspondence, and such questions may be submitted direct to the board of arbitration when authorized by a majority of the executive board.

295

Commissioner shall be ex officio chairman of all rate committees and shall represent absent members.

SECTION 4. The commissioner shall be ex officio chairman of all rate committees and shall be the medium of communication between such committees and the executive board. Absent members of rate committees shall be represented by the commissioner, as in case of absent members of executive board. During the interim between the reference of any matter of difference from a rate committee to the executive board and the final determination of such matter the commissioner, if he deem it a matter requiring prompt action, shall have authority to decide it temporarily, and his decision shall be binding on all parties until changed by the executive board or by arbitration.

Commissioner shall have authority to decide temporarily questions on which rate committees fail to agree.

ARTICLE NINTH.

Executive board authorized to make rules and regulations.

SECTION 1. The executive board shall have authority to make from time to time such rules and regulations, not inconsistent with this agreement, as may be necessary to secure a systematic conduct of the affairs of the association and attain the objects for which it is formed.

ARTICLE TENTH.

Duties of president.

SECTION 1. The president shall preside over all general meetings of the association, certify to the record of such meetings, and communicate the proceedings to all the members. He shall call a general meeting of the association whenever he is requested to do so by three members of the executive board, or whenever it is in his judgment necessary.

Duties of the vice-president.

SECTION 2. The vice-president, in the absence of the president, shall be empowered to perform all the duties of the president, and in the absence of the vice-president a
296 chairman may be selected from the members of the association.

ARTICLE ELEVENTH.

Duties of board of arbitration.

SECTION 1. The board of arbitration shall hear and determine all questions which may be submitted to it covered by this agreement, or by consent of the parties, and the decisions of the said board shall become immediately effective.

Upon presentation to the board of arbitration of new or additional testimony, the said board may at its discretion grant a rehearing, but pending this rehearing and thereafter the decision already rendered shall be effective until suspended or changed by the said board.

The decisions of the board of arbitration shall be final and conclusive.

ARTICLE TWELFTH.

Duties of the secretary

SEC. 1. The secretary shall make complete and accurate records of the proceedings of all general meetings of the association, the originals of which shall be preserved in the general office of the association, and copies furnished to each member. He shall also act as secretary to the executive board, and to all committees herein provided for, and preserve similar records of their proceedings, and perform such other duties as may be assigned him by the commissioner.

ARTICLE THIRTEENTH.

Duties of the commissioner.

SECTION 1. The commissioner shall be the chief executive officer of the association, and as a representative of its members, both severally and jointly, shall act for them in all matters that come within the jurisdiction of the association, in conformity with the requirements of this contract and the instructions of the executive board and committees herein provided for, but exercising his discretion in all cases which are not provided for, either by this agree-
297 ment or by the executive board and committees acting under its authority and sanction. When directed by the executive board, the commissioner shall also take

charge of the reports and claims, and appoint such clerks and claim agents as may be necessary, and charge up the expense to the roads interested in the business, on an equitable basis, managing the business for the benefit and at the cost of the companies interested. He shall also reduce the rates whenever, in his judgment, the exigencies of the case shall so demand, to meet the competition of lines or roads not parties to this agreement, and of lines parties to this agreement when such lines fail to maintain the rates as established under the agreement; and he shall at the same time make, upon request of any interested member, corresponding reductions from other points from which relative rates are made, preserving established differentials. His interpretation of any decision of the board of arbitration shall be binding on all parties until an appeal from the same has been made to the board of arbitration and a decision announced. He shall have such authority over the traffic officers and their subordinates and over the accounting departments of the parties hereto as may be necessary to enforce the terms of this contract relative to the maintenance of rates, and to require information relating to the traffic to be furnished to him in such form or manner as he may deem necessary. He shall have access, either in person or by deputy, to the books, papers, correspondence, etc., of any of the officers, agents, or employés of the parties hereto that relate to the freight traffic covered by this agreement.

ARTICLE FOURTEENTH.

Accounts of traffic to be kept by the commissioner.

SECTION 1. The commissioner shall keep such accounts of the traffic covered by this agreement, and make such reports of the same as may be directed by the executive board.

ARTICLE FIFTEENTH.

Care and disbursement of.

SECTION 1. All disbursements of the funds of the
298 association shall be made by the commissioner, who shall give bond with security, in such amount as shall be satisfactory to the executive board, that he will duly and properly account for all moneys of the association, or belonging to members thereof, which may in any manner come into his possession or under his control. No payment shall be made except on properly receipted vouchers; said vouchers and all the accounts of the commissioner shall be audited at least quarterly by the executive board, or by such person or persons as it may appoint for that purpose.

ARTICLE SIXTEENTH.

Deposit to pay fines.

SECTION 1. In order to provide for the prompt payment of any fines that may be assessed against any member of this

association for violating its rules, each company shall deposit with the commissioner an amount equivalent to four ($4.00) dollars for each mile of the road operated by said company under the provisions of this agreement, or in case where a company operates a water line, four ($4.00) dollars for each mile allowed as a prorating distance in the division of through rates; provided, such amounts shall not exceed in the aggregate the sum of five thousand ($5,000) dollars or less than five hundred ($500) dollars for any one company; but in all cases where fines are assessed the commissioner is hereby authorized, after ten days' notice to them, to draw at sight on the parties against whom such fines are assessed for the full amount of said fines, and each company party to this agreement hereby binds itself to promptly pay such drafts, it being the intent and meaning of this section that the deposit herein provided for shall not be diminished by reason of the payment of any fines that may be assessed against a company making such deposit.

ARTICLE SEVENTEENTH.

Commissioner to be furnished with copies of manifests.

SECTION 1. The commissioner shall be furnished
299 with copies of all manifests for traffic covered by this agreement, such copies to be forwarded at the time of shipments to which they appertain are made, and shall show the original shipping points and through rates, and also the divisions thereof, so far as such divisions are controlled by this agreement, and abstracts of all such manifests shall be furnished to the commissioner at the expiration of each month; but it is understood that members of the association shall not have access to any of such manifests, or be furnished with the names of consignors or consignees. The tonnage books of every company in the association shall be open at all times to the inspection of the commissioner, or such agents as he may from time to time appoint, for the purpose of enabling him to get a complete record of all traffic covered by this agreement.

ARTICLE EIGHTEENTH.

Copies of rates to be sent to officers or members.

SECTION 1. Copies of all rates that may from time to time be agreed upon, or fixed in the manner provided, shall be furnished promptly to the auditors and other officers of the parties to this contract, and they shall see that the rates are enforced in conformity therewith, and that no variations are made from such rates or manifests, by voucher or otherwise.

ARTICLE NINETEENTH.

All rail rates.

SECTION 1. That all rail rates between the ports of Boston, Providence, New York, Philadelphia, and Baltimore

and points in the territory of the association, except Chattanooga and Knoxville, Tenn., and except points north and west of the Alabama Great Southern Railroad, Chattanooga to Meridian, Miss., and except points on and west of the Mobile & Ohio Railroad, Meridian to Mobile, Ala., both inclusive, shall be higher than the rates by combined water and rail lines by the following differentials:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
12.	10.	9.	8.	6.	5.	5.	5.	5.	5.	6.	8.	10.

Until changed by agreement or arbitration.

300	Commodities, not otherwise specified	5 cents per 100 lbs.
	Cotton-seed oil, cotton-seed meal, cotton-seed cake, north bound.....	2 cents per 100 lbs.

Pig iron per ton of 2,268 lbs.	Not less than the following figures:	
Cast-iron pipe, per ton of 2,000 lbs	To Baltimore.....	25c.
	To Philadelphia, Jersey City, and New York	50c.
Scrap iron, per ton of 2,000 lbs	To Boston and Providence	75c.

Cotton, lumber, timber, unmanufactured forest products, naval stores, stone and marble, rough or sawed, and ores, north bound, NO differential.

Cotton factory products, north bound, 3 cents per 100 lbs.

To and from points in the territory above excepted rates by all-rail and by combined water and rail lines may be the same.

SECTION 2. That the all-rail port rates thus formed shall be the basis for all-rail rates between points in the territory covered by this association and interior points in the Northern and Eastern States east of the territorial dividing line named in article 2, section 3 of this agreement; except where combinations on any of the all-rail gateways make less, when such combination rates shall apply.

Combined water and rail rates between association territory and interior Eastern territory.

SECTION 3. That the combined water and rail rates between the territory described in section 2, and the territory of the Southern Railway & Steamship Association (except Chattanooga and Knoxville, Tenn., points north and west of the Alabama Great Southern Railroad, Chattanooga to Meridian, Miss., and points on and west of the Mobile & Ohio Railroad, Meridian to Mobile, Ala., both inclusive) shall be lower that the all-rail rates by the following differentials,

except where combinations on the ports make less
301 totals, when combination rates shall apply via the combined water and rail lines:

1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	H.	F.
4	3	2	2	1	1	1	1	1	1	1	2	2

Commodities not otherwise specified, 1.

Until changed by agreement or arbitration.

Cotton, lumber, timber, unmanufactured forest products, naval stores, stone, marble, rough or sawed, and ores, northbound, NO differential.

To and from points in the territory of the Southern Railway & Steamship Association above excepted the rates by all-rail and by combined water and rail lines may be the same.

Cost of marine risks to be assumed only by the issue of insured bills of lading.

SECTION 4. The combined water and rail lines may insure against marine risks by issuing insured bills of lading, but in no other manner.

Method of changing all rail and combined water and rail rates.

SECTION 5. All changes in rates in accordance with the preceding sections shall be made as provided by article 8.

All rail differentials shall not be changed except by arbitration.

SECTION 6. The above-named differentials as between all-rail lines and water, or combined water and rail lines, including the eastern territory to which they apply, shall not be changed except by agreement or arbitration, which may at any time be called for by any party to this agreement.

ARTICLE TWENTIETH.

Reports of tonnage and revenue to the commissioner.

SECTION 1. The commissioner, with the approval of the executive board, shall organize such a system for the rendition of tonnage and revenue reports of the traffic covered by this agreement as shall enable the commissioner to be at all times fully informed of the movements thereof, and the observance of rates established therefor, in order that he may detect promptly any violation of rates, and keep each company or line informed of the action of the other companies or lines. For these purposes, the commissioner, at his discretion, may appoint agents to examine the books of the members of the association, and inspectors of the
302 weight and classifications, who shall at all times have access to and be permitted to examine goods. Any losses or damages resulting to initial carriers from the opening of packages by inspectors shall be prorated on the basis of revenue. The expenses of such agents and inspectors shall be distributed among the members as hereinafter set forth. Tonnage and revenue statements shall be rendered monthly to each member of the association, and also annually on the 30th day of April in a report to be made by the

commissioner at the expiration of each year and distributed to the members at least two weeks before the annual meeting.

ARTICLE TWENTY-FIRST.

Differences referred to arbitration.

SECTION 1. All measures necessary to carry out the purpose of this agreement shall be taken jointly by the parties hereto; and should any question arise upon which they can not agree in relation to the terms of this contract, or to any matter covered by it, it shall, upon the request of any member, be decided by arbitration as herein provided, it being one of the fundamental principles of this contract that no party shall take separate action in any matter affecting the interest of one or more of the other parties contrary to the spirit and intent of this contract, and that all differences relating to the 'stablishment, adjustment, and maintenance of rates upon the traffic covered by this contract shall be adjusted by arbitration.

ARTICLE TWENTY-SECOND.

Reduction of rates forbidden.

SECTION 1. Whenever rates have been fixed by the rate committee, the commissioner, the executive board, or by arbitration, there shall be no reduction from such rates without the consent of the commissioner. No member of the association shall reduce such rates, directly or indirectly, by any special rate, rebate, or drawback, or by payment of commissions, or by reductions on manifests, or by com-
303 bination of local rates, or by rebilling, or by underbilling weights, or by any consideration in the way of free or reduced transportation, or in any manner, or by any device whatsoever, or shall any time contracts be made even at authorized rates without the authority of the Commissioner.

SECTION 2. It is distinctly understood and agreed that the maintenance of rates as established under the rules of the association is of the very essence of this agreement, and the parties hereto pledge themselves to maintain them and to require all their connections to maintain such rates, and in the event of any company or line or its connections not members of the association failing to conform to this obligation, the other parties in interest pledge themselves to increase their proportions of through rates sufficiently to protect the authorized rates, and, with the approval of two-thirds of the executive board, to apply full local rates upon all traffic subject to the association agreement coming from or going to such offending lines, when required by the commissioner to do so.

Provided, that the remedy to secure a maintenance of rates shall also apply to underbilling weights, free passes or reduced rates of transportation, time contracts, or any other

device whatsoever calculated to influence or control traffic in violation of the association agreement.

Method of procedure in case of violations of agreement and enforcement of penalties.

SECTION 3. Whenever the commissioner shall have reason to believe that the rates, as established under the rules of the association, are not being fully maintained, or that the rules or regulations or provisions of the agreement designed to secure the maintenance are not being complied with by any line or company member of the association, it shall be his duty to make a full investigation of the facts in such cases, and if, in his judgment, there has been any violation of the agreement on the part of any member or members of this association, he shall submit the evidence in such case to the board of arbitration, in accordance with regulations to be established by the executive board for that purpose, and if the board of arbitration shall find, after a full hearing of the case, that any member is or has been guilty of violating this agreement, it shall impose such penalty therefore as it may deem proper and commensurate with the injuries inflicted upon the association, and of competing lines parties to this agreement, provided the infliction and enforcement of one penalty shall not prevent the infliction and enforcement of other penalties in case of continued or further violation of the agreement by the same member. The commissioner shall enforce such penalties, making use, if necessary, of the fund provided for such purpose. Any surplus over and above the amount that may be awarded by the board of arbitration to indemnify any member for losses sustained shall be applied to the payment of the expenses of the association. And the board of arbitration shall state in its decision, how much, if any, of the award is to be paid to members who have sustained loss, and how much to each, the remainder to be applied to the general expenses of the association; provided, however, that members against whom penalties are assessed shall not become beneficiaries of any money paid under such decision.

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Authority of board of arbitration to make or amend rules for trial of cases.

SECTION 4. The board of arbitration shall, from time to time, make or amend rules of procedure for the trial of such cases, and the submission of arguments in cases referred to it for decision, as it may deem proper.

Authority of the commissioner over members on violation of terms of agreement.

SECTION 5. Under any of the circumstances mentioned in section 3, the commissioner shall immediately issue instructions to the member or members charged with the violation, as he may deem advisable, pending action of the board of arbitration. If the member fails to comply with such order, the commissioner may take such steps for the protection of the association as he may deem advisable, with the approval of two-thirds of the executive board.

ARTICLE TWENTY-THIRD.

Distribution of the association the expenses of the association.

SECTION 1. The expenses of the association shall be assessed upon the members pro rata, according to
305 their gross revenue derived from the traffic covered by the agreement, subject to such regulations as may be established by the executive board, each member to advance at the beginning of the year three hundred ($300) dollars towards its proportion of the expenses.

ARTICLE TWENTY-FOURTH.

Period of validity of agreement.

SECTION 1. This contract shall be considered as a renewal of the contract terminating on the first day of August, 1894, and shall terminate on the 31st day of July, 1895, and the fiscal year of the association shall terminate on the first day of April, 1895.

EXHIBIT No. 6.—Filed by J. M. Brown, p. 72.

Freight tariff classes—Percentages.

Each company doing business as a common carrier in this State is allowed to apply the standard freight tariff, subject to the conditions of the tariff class below in which such company is placed.

Class No. 1.

The standard tariff, without percentage.

Class No. 2.

To classes 1, 2, 3, 4, 5, 6, A, B, E, G, H, K, L, M, N, O, and R add ten per cent to commissioners' standard tariff.

To classes C, D, F, J, and P apply the commissioners' standard tariff.

Class No. 3.

On classes 1, 2, 3, 4, 5, 6, A, E, G, H, L*, N, O the standard tariff with twenty per cent added.

On classes B, K, M, R the standard tariff with ten per cent added.

On classes C, D, F, J, and P the standard tariff without percentage.

*On lime and ice the standard tariff with ten per cent added.

306 Class No. 4.

On classes 1, 2, 3, 4, 5, 6, A, E, G, H, L,* N, O, the standard tariff with twenty-five per cent added.

On B, K, M, R, the standard tariff with ten per cent added.

On Classes C, D, F, J, and P, the standard tariff without percentage.

*On lime and ice, Class L, with ten per cent added.

Class No. 5.

Add twenty-five per cent to all classes, except C, D, F, J, and P.

Class No. 6.

On classes 1, 2, 3, 4, 5, 6, A, B, E, G, H, K, L,* M,* N, O, and R:* For 40 miles and under, the standard tariff with fifty per cent added; for 70 miles and over 40 miles, the standard tariff with forty per cent added; for 100 miles and over 70 miles, the standard tariff with thirty per cent added; over 100 miles, the standard tariff with twenty per cent added.

*On fertilizers, L. C. L., Class K, with ten per cent added for any distance.

*On fertilizers, C. L., Class M, with ten per cent added for any distance.

*On turpentine, Class R, with ten per cent added for any distance.

*On Classes C, D, F, J, and P, the standard tariff without percentage.

*On lime and ice, the standard tariff with ten per cent added.

Class No. 7.

On classes 1, 2, 3, 4, 5, 6, A, B, E, H, and K, commissioners' standard tariff with fifty per cent added.

On Classes C, D, F, G, J, L, M, N, O, and R, commissioners' standard tariff with twenty-five per cent added.

On Class P, commissioners' standard tariff.

307. *Classified list of railroads in Georgia.*

For freight tariffs see corresponding numbers on opposite page.

Class No. 1. (No. of roads, 4.)

Alabama Great Southern.
Georgia (except G., J. and S. branch.)
Lexington Terminal.
Western and Atlantic.

Class No. 2. (No. of roads, 3.)

Atlanta and West Point.
Hartwell.
Seaboard Air-Line.

Class No. 3. (No. of roads, 4.)

Douglas and McDonald.
Florida Central and Peninsular.
Plant System (all lines).
Tifton and Northeastern.

Class No. 4. (No. of roads, 7.)

Central System (all lines except Savannah and Atlantic).
Chattanooga, Rome and Columbus.
East and West.

Lawrenceville.
Marietta and North Georgia.
Northeastern, of Georgia.
Southern Railway System (all lines).

Class No. 5. (No. of roads, 3.)

Gainesville, Jefferson and Southern (branch Georgia Railroad).
Smithsonia and Dunlap.
Talbotton.

Class No. 6. (No. of roads, 32.)

Abbeville and Waycross.
Albany and Northern.
308 Augusta Southern.
Augusta and Knoxville.
Blue Ridge and Atlantic.
Chattanooga Southern.
Chicamauga and Durham.
City and Suburban.
Columbus Southern.
Cuyler and Woodburn.
Darien and Western.
Foy Railroad.
Georgia and Alabama (formerly S., A. and M. Ry.).
Georgia Midland and Gulf.
Georgia Northern (formerly Boston and Albany).
Georgia Southern and Florida.
Hawkinsville and Florida Southern.
Indian Springs and Flovilla.
Louisville and Wadley.
Macon, Dublin and Savannah.
Macon and Northern.
Middle Georgia and Atlantic.
Midville, Swainsboro and Red Bluff.
Millen and Southern.
Oconee and Western.
Sandersville.
South Brunswick.
Stillmore Air-Line.
Valdosta Southern.
Wadley and Mt. Vernon.
Waycross Air-Line.
Wrightsville and Tennille.

Class No. 7. (No. of roads, 2.)

Dover and Statesboro.
Sylvania.

309 *Standard freight tariff—Classes.*

Distance.	Per 100 pounds.											Per bbl.	Per 100 lbs.	Per 100 lbs.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.	H.
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
5	12	11	10	8	7	6	6	6	4½	3½	7	9	2½	8
10	16	14	13	10	9	8	8	8	5½	5	9	11½	3½	10
15	18	16	15	12	11	9	9	9	6	5½	11	12½	3½	12
20	20	18	16	14	12	10	10	10	7	6	12	14	5	14
25	22	20	18	16	13	11	11	11	7½	6½	13	15	5½	16
30	24	21	19	17	14	11	11	11	7½	6½	14	15	6	17
35	26	23	21	19	15	12	12	12	8	7½	15	16½	6½	19
40	27	24	22	20	16	12	12	12	8	7½	16	16½	6½	20
45	29	26	24	21	17	13	13	13	8½	8	17	17½	6½	21
50	**30**	**27**	**25**	**22**	**18**	**13**	**13**	**13**	**8½**	**8**	**18**	**17½**	**7**	**22**
55	32	29	26	23	19	14	14	14	9	8½	19	18	7	23
60	33	30	27	24	19	14	14	14	9	8½	19	18	7½	24
65	35	32	28	25	20	15	15	15	9½	9	20	19	7½	25
70	36	33	29	26	20	15	15	15	9½	9	20	19	7½	26
75	38	35	30	27	21	16	16	16	10	9½	21	20	7½	27
80	39	36	31	28	21	16	16	16	10	9½	21	20	7½	28
85	41	37	32	29	22	17	17	17	11	10	22	21½	7½	29
90	42	38	33	29	22	17	17	17	11	10	22	21½	8	29
95	44	39	34	30	23	18	18	18	11½	11	23	23	8	30
100	**45**	**40**	**35**	**30**	**23**	**18**	**18**	**18**	**11½**	**11**	**23**	**23**	**8½**	**30**
110	48	42	37	31	24	19	19	19	12	11	24	23	8½	31
120	51	44	39	32	25	20	20	20	13	12	25	24	8½	32
130	54	46	41	33	26	21	21	21	13	12	26	25	8½	33
140	57	48	43	34	27	22	22	22	13	13	27	26	9	34
150	**60**	**50**	**45**	**35**	**28**	**23**	**23**	**23**	**14**	**13**	**28**	**28**	**9**	**35**
160	62	52	46	36	29	24	24	24	14	13	29	29	9½	36
170	64	54	47	37	30	25	25	25	15	14	30	31	9½	37
180	66	56	48	38	31	26	26	26	15	14	31	31	9½	38
190	68	58	49	39	32	27	27	27	16	15	32	33	9½	39

310 *Standard freight tariff—Classes*—Continued.

Distance.	Per 100 pounds.											Per bbl.	Per 100 lbs.	Per 100 lbs.
	1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	G.	H.
Miles.	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*	*Cts.*
200	**70**	**60**	**50**	**40**	**32**	**27**	**27**	**27**	**16**	**15½**	**32**	**33**	**9½**	**40**
210	71	62	51	41	33	28	28	28	17	16	33	34	9½	41
220	72	64	52	42	33	28	28	28	17	16	33	34	10	42
230	73	66	53	43	34	29	29	29	18	17	34	36	10½	43
240	74	68	54	44	34	29	29	29	18	17	34	36	10½	44
250	**75**	**70**	**55**	**45**	**35**	**30**	**30**	**30**	**19**	**18**	**35**	**38**	**10½**	**45**
260	76	71	56	46	35	30	30	30	19	18	35	38	10½	46
270	77	71	56	46	36	31	31	31	20	19	36	40	10½	46
280	78	72	57	47	36	32	32	32	20	19	36	40	10½	47
290	79	72	57	47	37	32	32	32	21	19	37	42	10½	47
300	**80**	**73**	**58**	**48**	**38**	**33**	**33**	**33**	**21**	**19**	**38**	**42**	**11**	**48**
310	81	73	58	48	38	33	33	33	21	19	38	42	11	48
320	82	74	59	49	39	34	34	34	21	20	39	42	11	49
330	85	74	59	49	39	34	34	34	22	20	39	44	11	49
340	84	74	59	49	39	34	34	34	22	20	39	44	11	49
350	**85**	**75**	**60**	**50**	**40**	**35**	**35**	**35**	**23**	**21**	**40**	**46**	**11**	**50**
360	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
370	85	75	60	50	40	35	35	35	23	21	40	46	11½	50
380	88	76	61	51	41	36	36	36	25	23	41	50	11½	52
390	88	76	61	51	41	36	36	36	25	23	41	50	11½	52
400	**88**	**76**	**61**	**51**	**41**	**36**	**36**	**36**	**25**	**23**	**41**	**50**	**11½**	**52**
410	91	77	62	52	42	37	37	37	26	24	42	52	11½	54
420	91	77	62	52	42	37	37	37	26	24	42	52	11½	54
430	91	77	62	52	42	37	37	37	26	24	42	52	11½	54
440	94	78	63	53	43	38	38	38	26	24	43	52	11½	54
450	**94**	**78**	**63**	**53**	**43**	**38**	**38**	**38**	**27**	**25**	**43**	**54**	**11½**	**56**
460	94	78	63	53	43	38	38	38	27	25	43	54	12	56

Distance.	Per 100 lbs.		Per ton.		Per carload.			Per 100 lbs.
	J.	K.	L.	M.	N.	O.	P.	R.
Miles.	*Cts.*	*Cts.*	$ *Cts.*	$ *Cts.*	$ *Cts.*	$ *Cts.*	$ *Cts.*	*Cts.*
5	8	4	.35	.55	5.00	5.50	4.00	4
10	10	5	.50	.80	6.50	8.00	5.00	5
15	12	5½	.55	.85	7.50	9.00	6.00	5½
20	13	6	.60	.90	8.00	10.00	7.00	6
25	14	6½	.65	.95	9.00	11.00	8.00	6½
30	15	7	.70	1.00	10.00	11.00	8.00	7
35	16	7½	.75	1.05	12.00	12.00	9.00	7½
40	17	8	.80	1.10	13.00	12.00	9.00	8
45	18	8	.85	1.15	14.00	13.00	10.00	8½
50	**19**	**8**	**.90**	**1.20**	**14.00**	**13.00**	**10.00**	**8**
55	20	8	.95	1.25	14.00	14.00	10.00	9
60	21	9	.95	1.30	14.50	14.00	11.00	10
65	22	9	1.00	1.35	15.50	15.00	11.00	10
70	22	9	1.00	1.40	16.00	15.00	11.00	11
75	23	9½	1.05	1.45	16.50	16.00	12.00	11
80	23	9½	1.10	1.50	17.00	16.00	12.00	12
85	24	9½	1.15	1.55	17.50	17.00	13.00	12
90	24	9½	1.15	1.60	18.00	17.00	13.00	13
95	25	10	1.20	1.65	19.00	17.00	14.00	14
100	**25**	**10**	**1.20**	**1.70**	**20.00**	**17.00**	**14.00**	**14**
110	26	10	1.25	1.80	21.00	18.00	14.00	15
120	27	10½	1.30	1.90	23.00	18.00	15.00	16
130	28	10½	1.35	2.00	24.00	19.00	16.00	17
140	29	11	1.40	2.10	25.00	19.00	16.00	18
150	**30**	**11**	**1.50**	**2.20**	**26.00**	**20.00**	**17.00**	**18**
160	31	12	1.60	2.25	27.00	20.00	17.00	19
170	32	12	1.70	2.30	28.00	21.00	18.00	19
180	33	12	1.80	2.35	29.00	21.00	19.00	20
190	34	13	1.90	2.40	29.50	22.00	19.00	20
200	**35**	**13**	**2.00**	**2.45**	**30.00**	**22.00**	**20.00**	**20**
210	36	13	2.10	2.50	31.00	23.00	20.00	21
220	37	14	2.20	2.55	31.50	23.00	21.00	21
230	38	14	2.30	2.65	32.00	24.00	21.00	21
240	39	14	2.40	2.65	33.00	24.00	22.00	22
250	**40**	**15**	**2.50**	**2.75**	**33.50**	**24.00**	**22.00**	**22**
260	41	15	2.60	2.75	34.00	24.00	22.00	22
270	42	15	2.70	2.85	34.50	25.00	23.00	23
280	43	16	2.80	2.85	35.00	25.00	23.00	23
290	44	16	2.90	2.95	36.00	25.00	24.00	24
300	**45**	**16**	**2.95**	**3.00**	**36.50**	**26.00**	**24.00**	**23**
310	46	17	3.05	3.10	37.00	26.00	24.00	25
320	47	17	3.05	2.20	38.00	26.00	24.00	25
330	48	17	3.15	3.30	38.50	27.00	25.00	25
340	49	17	3.15	3.40	39.00	27.00	25.00	25
350	**50**	**17**	**3.28**	**3.50**	**40.00**	**27.00**	**25.00**	**24**
360	51	17	3.28	3.50	40.00	27.00	25.00	24
370	52	17	3.28	3.50	40.00	27.00	25.00	24
380	53	18	3.41	3.60	41.00	29.00	27.00	25
390	54	18	3.41	3.60	42.00	29.00	27.00	25
400	**55**	**18**	**3.41**	**3.60**	**42.00**	**29.00**	**27.00**	**25**
410	56	19	3.54	3.70	44.00	31.00	29.00	25
420	57	19	3.54	3.70	44.00	31.00	29.00	25
430	58	19	3.54	3.70	44.00	31.00	29.00	25
440	59	20	3.67	3.80	46.00	33.00	31.00	30
450	**59**	**20**	**3.67**	**3.80**	**46.00**	**33.00**	**31.00**	**30**
460	60	20	3.67	3.80	46.00	33.00	31.00	30

Passenger, class B (four cents per mile).
Freight, class No. 6 (see page No. 64).

Distance table.

WADLEY	0	Riner	19	Odomville	25
Pinetucky	8	Meeks	20	Adrian	28
Kite	15	Ethel	22	Rixville	30
Hodo	17				

WAYCROSS AIR-LINE RAILROAD.

Passenger, class B (four cents per mile).
Freight, class No. 6 (see page No. 64).

Distance table.

Waycross	0	Boleu	15	Sessoms	25
Watertown	6	Beach	20	Nicholls	30
Elsie	11				

WESTERN & ATLANTIC RAILROAD.

Passehger, class A (three cents per mile).
Freight, class No. 1 (see page No. 64).

Distance table.

	ATLANTA	0
	Bolton	7
	Gilmore	9
	Vining's	11
	Smyrna	15
	MARIETTA	20
	Elizabeth	22
	Kennesaw	29
	Acworth	35
	Allatoona	40
	Bartow	42
	Emerson	43
	CARTERSVILLE	48
	Rogers'	51
	Cass	52
	Best's	55
	KINGSTON	59
313	Hall's	64
	Adairsville	68
	McDaniel's	75
	Calhoun	78
	Resaca	84
	Tilton	90
	DALTON	99
	Tunnel Hill	107
	Ringgold	114
	Graysville	120
	Chicamauga, Tenn	126
	CHATTANOOGA, TENN	137

ROME BRANCH.

Distance table.

	Kingston	0
	Wooley's	3

Murchison's 4
Eves 7
Bass Ferry 9
Dykes 11
Freemans 12
Brick Yard 16
Second Avenue 17
Rome 18

WRIGHTSVILLE & TENNILLE RAILROAD.

Passenger, class A (three cents per mile).
Freight, class No. 6 (see page No 64).

Distance table.

TENNILLE 0
Lindsays 4
Peacock's Cut 6
Harrison 10
Donovan 14
WRIGHTSVILLE 17
Meadow's 21
Lovett 24
Donaldson 26
Bruton 28
Condor 32
DUBLIN 36

314 Act creating the railroad commission of Georgia, and acts amendatory thereto, with extracts from the constitution of the State of Georgia and laws of the State relating to railroads.

The following is the law under which the railroad commission was created, being act No. 269, Part 1, Title 12, of the acts and resolutions of the general assembly of the State of Georgia, 1878–1879:

An act to provide for the regulation of railroad freight and passenger tariffs, and the location and building of passenger and freight depots in this State; to prevent unjust discrimination in the rates charged for transportation of passengers and freights, and to prohibit railroad companies, corporations, and lessees in this State from charging other than just and reasonable rate, and to punish the same, and to prescribe a mode of procedure and rules of evidence in relation thereto, and to appoint commissioners, and to prescribe their powers and duties in relation to the same.

Whereas, It is made the duty of the general assembly, in article 4, paragraph 2, and section 1 of the constitution, to pass laws from time to time to regulate freight and passenger tariffs; to prohibit unjust discrimination on the various railroads of this State, and to prohibit railroads from charging other than just and reasonable rates, and enforce the same by adequate penalties; therefore,

(Commissioners' appointment, term, and salary.)

SECTION I. Be it enacted by the general assembly of Georgia, that there shall be three commissioners, appointed by the governor, with the advice and consent of the senate, to carry out the provisions of this act, of whom one shall be of experience in the law and one of experience in the railway business. After the expiration of the terms of the office of the commissioners first appointed, the term of office of successors shall be six years; but at the first appointment one commissioner shall be appointed for two years, one for four years, and one for six years. The salary of each commissioner shall be twenty-five hundred dollars, to be paid from the treasury of the State. Any commissioner may be suspended from office by order of the governor, who shall report the fact of such suspension, and the reasons therefor, to the next general assembly, and if a majority of each branch of the general assembly declare that said commissioner shall be removed from office, his term of office shall
315 expire. The governor shall have the same power to fill vacancies in the office of commissioner as to fill other vacancies, and if, for any reason, said commissioners are not appointed during the present session of the general assembly, the governor shall appoint them thereafter, and report to the next senate, but the time until then shall not be counted as part of the term of office of said commissioners, respectively, as herein provided. Said commissioners shall take an oath of office, to be framed by the governor, and shall not, jointly or severally, or in any way, be the holders of any railroad stock or bonds, or be the agent or employee of any railroad company, or have any interest in any way in any railroad, and shall so continue during the term of office; and in case any commissioner becomes disqualified in any way, he shall at once remove the disqualifications or resign, and on failure so to do he must be suspended from office by the governor and dealt with as hereinafter provided. In any case of suspension the governor may fill the vacancy until the suspended commissioner is restored or removed.

(Location of office, employment of secretary, expenses, etc.)

SEC. II. That said commissioners shall be furnished with an office, necessary furniture and stationery, and may employ a secretary or clerk, at a salary of twelve hundred dollars, at the expense of the State. The office of said commissioners shall be kept in Atlanta, and all sums of money authorized to be paid by this act out of the State treasury shall be paid only on the order of the governor: Provided, That the total sum to be expended by said commissioners for office rent, furniture, and stationery shall in no case exceed the sum of eight hundred ($800) dollars, or so much thereof as may be necessary, per annum.

(Extortion by railroads forbidden.)

SEC. III. That from and after the passage of this act, if any railroad corporation, organized or doing business in this State, under an act of incorporation or general law of this State now in force, or which hereafter may be enacted, or any railroad corporation organized, or which hereafter may be organized, under the laws of any other State and doing business in this State, shall charge, collect, demand, and receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its track, or any of its branches thereof, or upon any railroad within this State which it has the right, license, or

permission to use, operate, or control, the same shall be deemed guilty of extortion, and, upon conviction thereof, shall be dealt with as hereinafter provided.

(Unjust discrimination forbidden.)

SEC. IV. That if any railroad corporation as aforesaid shall
316 make any unjust discrimination in its rates or charges for toll or compensation for the transportation of passengers or freights of any description, or for the use and transportation of any railroad car upon its said road, or upon any of the branches thereof, or upon any railroads connected therewith, which it has the right, license, or permission to operate, control or use, within this State, the same shall be deemed guilty of having violated the provisions of this act, and, upon conviction thereof, shall be dealt with as hereinafter provided.

(Duty of commissioners.)

SEC. V. That the commissioners appointed, as hereinbefore provided, shall, as provided in the next section of this act, make reasonable and just rates of freight and passenger tariffs, to be observed by all railroad companies doing business in this State on the railroads thereof; shall make reasonable and just rules and regulations, to be observed by all railroad companies doing business in this State, as to charges at any and all points, for the necessary handling and delivering of freights; shall make such just and reasonable rules and regulations as may be necessary for preventing unjust discriminations in the transportations of freight and passengers on the railroads in this State; shall have the power to make just and reasonable joint rates for all connecting railroads doing business in this State, as to all traffic or business passing from one of said roads to another, and to require the location of such depots, and the establishment of such freight and passenger buildings as the condition of the road, the safety of freight, and the public comfort may require: Provided, however, That before applying joint rates to roads that are not under the management and control of one and the same company the commissioners shall give thirty days' notice to said roads of the joint rate contemplated, and of its division between said roads, and give hearing to roads desiring to object to the same; shall make reasonable and just rates of charges for use of railroad cars carrying any and all kinds of freight and passengers on said railroad, no matter by whom owned or carried; and shall make just and reasonable rules and regulations, to be observed by said railroad companies on said railroads, to prevent the giving or paying of any rebate or bonus, directly or indirectly, and from misleading or deceiving the public in any manner as to the real rates charged for freight and passengers: Provided, That nothing in this act contained shall be taken as in any manner abridging or controlling the rates for freight charged by any railroad company in this State for carrying freight which comes from or goes beyond the boundaries of the State, and on which freight less than local rates on any railroad carrying the same are charged by such railroad, but said railroad compa-
317 nies shall possess the same power and right to charge such rates for carrying such freights as they possessed before the passage of this act; and said commissioners shall have full power by rules and regulations to designate and fix the difference in rates of freight and passenger transportation, to be allowed for longer and shorter distances on the

same or different railroads, and to ascertain what shall be the limits of longer and shorter distances.

(Commissioners shall make schedule of rates, publish same, etc.)

SEC. VI. That the said railroad commissioners are hereby authorized and required to make for each of the railroad corporations doing business in this State, as soon as practicable, a schedule of just and reasonable rates of charges for the transportation of passengers and freights and cars on each of said railroads; and said schedule shall, in suits brought against any such railroad corporations wherein is involved the charges of any such railroad corporation for the transportation of any passenger or freight or cars, or unjust discrimination in relation thereto, be deemed and taken in all courts of this State as sufficient evidence that the rates therein fixed are just and reasonable rates of charges for the transportation of passengers and freights and cars upon the railroads; and said commissioners shall, from time to time, and as often as circumstances may require, change and revise said schedules. [When any schedule shall have been made or revised, as aforesaid, it shall be the duty of said commissioners to cause publication thereof to be made for one time in some public newspaper published in the cities of Atlanta, Augusta, Albany, Savannah, Macon, Rome, Athens, Americus, and Columbus, in this State, at a rate not to exceed fifty cents per square of usual advertising space when less than a column is occupied, or more than twelve dollars per column when as much space as a column or more is occupied, by inserting said schedule or change of any schedule, so that said newspaper shall not charge for such advertising any rate in excess of that allowed for county legal advertising; and after the same shall be so published, it shall be the duty of all such railroad companies to post at all their respective stations, in a conspicuous place, a copy of said schedule for the protection of the people: Provided, That the schedule thus prepared and published, as aforesaid, for all the railroad companies now organized under the laws of this State, or that may be organized at the time of said publication: Provided, That when any rate or change is made by the commissioners that affects only one road or roads in a particular locality, the insertion need only be made in the paper published in one of the cities named nearest where the change is made (act 27th September, 1883):

Provided, That the schedules thus prepared shall not be taken as
318 evidence, as herein provided, until schedules have been prepared and published, as aforesaid, for all railroad companies now organized, under the laws of this State, or that may be organized at the time of said publication. All such schedules, purporting to be printed and published as aforesaid, shall be received and held in all such suits as prima facie the schedules of said commissioners, without further proof than the production of the schedules desired to be used as evidence, with a certificate of the railroad commission that the same is a true copy of the schedule prepared by them for the railroad company or corporation therein named, and that the same has been duly published as required by law.]

(Jurisdiction and power of commissioners.)

SEC. VII. That it shall be the duty of said commissioner to investigate the books and papers of all the railroad companies doing business in this State, to ascertain if the rules and regulations aforesaid have been

complied with, and to make personal visitation of railroad offices, stations, and other places of business for the purpose of examination, and to make rules and regulations concerning such examination, which rules and regulations shall be observed and obeyed as other rules and regulations aforesaid; said commissioners shall also have full power and authority to examine all agents and employees of said railroad companies and other persons, under oath or otherwise, in order to procure the necessary information to make just and reasonable rates of freight and passenger tariffs, and to ascertain if such rules and regulations are observed or violated, and to make necessary and proper rules and regulations concerning such examinations, and which rules and regulations herein provided for shall be obeyed and enforced as all other rules and regulations provided for in this act.

(Power of commissioners over contracts between railroads.)

SEC. VIII. That all contracts and agreements between railroad companies doing business in this State, as to rates of freight and passenger tariffs, shall be submitted to said commissioners for inspection and correction, that it may be seen whether or not they are a violation of law or of the provisions of the constitution, or of this act, or of the rules and regulations of said commissioners; and all arrangements and agreements whatever as to the division of earnings of any kind by competing railroad companies doing business in this State shall be submitted to said commissioners for inspection and approval, in so far as they affect rules and regulations made by said commissioners to secure to all persons doing business with said companies just and reasonable rates of freight and passenger tariffs; and said commissioners may make such
319 rules and regulations as to such contracts and agreements as may then be deemed necessary and proper, and any such agreement, not approved by such commissioners, or by virtue of which rates shall be charged exceeding the rates fixed for freight and passengers, shall be deemed, held, and taken to be violations of article 4, section 1, paragraph 4 of the constitution, and shall be illegal and void.

(Penalty for violation of rules.)

SEC. IX. That if any railroad company doing business in this State, by its agents or employees, shall be guilty of a violation of the rules and regulations provided and prescribed by said commissioners; and if, after due notice of such violation given to the principal officer thereof, ample and full recompense for the wrong or injury done thereby to any person or corporation, as may be directed by the commissioners, shall not be made within thirty days from the time of such notice, such company shall incur a penalty for each offence of not less than one thousand dollars, nor more than five thousand dollars, to be fixed by the presiding judge. An action for the recovery of such penalty shall lie in any county in the State where such violation has occurred, or wrong has been perpetrated, and shall be in the name of the State of Georgia. The commissioners shall institute such action through the attorney-general or solicitor-general, whose fees shall be the same as now provided by law.

(Injuries resulting from violation of rules.)

SEC. X. That if any railroad company doing business in this State shall, in violation of any rule or regulation provided by the commissioners aforesaid, inflict any wrong or injury on any person, such person

shall have a right of action and recovery for such wrong or injury in the country where the same was done, in any court having jurisdiction thereof, and the damages to be recovered shall be the same as in actions between individuals, except that in cases of willful violation of law, such railroad companies shall be liable to exemplary damages; provided, that all suits under this act shall be brought within twelve months after the commission of the alleged wrong or injury.

(Rules of evidence.)

SEC. XI. That in all cases under the provision of this act the rules of evidence shall be the same as in civil actions, except as hereinbefore otherwise provided. All fines recovered under the provisions of this act shall be paid into the State treasury, to be used for such purposes as the general assembly may provide. The remedies hereby given the persons injured shall be regarded as cumulative to the remedies now given by law against railroad corporations, and this act shall not be construed as repealing any statute giving such remedies.

320 (Meaning of terms.)

SEC. XII. That the terms "railroad corporation," or "railroad company," contained in this act shall be deemed and taken to mean all corporations, companies or individuals now owning or operating, or which may hereafter own or operate any railroad, in whole or in part, in this State, and the provisions of this act shall apply to all persons, firms, and companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this State (street railways excepted), the same as to railroad corporations hereinbefore mentioned.

(Duplicate freight receipts.)

SEC. XIII. That all railroad companies in this State shall, on demand, issue duplicate freight receipts to shippers, in which shall be stated the class or classes of freight shipped, the freight charges over the road giving the receipt, and so far as practicable shall state the freight charges over other roads that carry such freight. When the consignee presents the railroad receipt to the agent of the railroad that delivers such freight, such agent shall deliver the article shipped upon payment of the rate charged for the class of freights mentioned in the receipt. If any railroad company shall violate this provision of the statute, such railroad company shall incur a penalty to be fixed and collected as provided in section nine of this act.

(Reports of commissioners.)

SEC. XIV. That it shall be the duty of the commissioners herein provided for to make to the governor annual reports of the transactions of their office, and to recommend, from time to time, such legislation as they may deem advisable under the provisions of this act.

(Power of commissioners over witnesses.)

SEC. XV. That said railroad commissioners, in making any examination for the purpose of obtaining information pursuant to this act, shall have power to issue subpœnas for the attendance of witnesses, by such rules as they may prescribe. And said witnesses shall receive for such attendance two dollars per day, and five cents per mile, traveled by the nearest practicable route in going to and returning from the place of meeting of said commissioners, to be ordered paid by the governor upon

presentation of subpœnas, sworn to by the witnesses, as to the number of days served and miles traveled, before the clerk of said commissioners, who is hereby authorized to administer oaths. In case any person shall willfully fail or refuse to obey such subpœna, it shall be the duty of the judge of the superior court of any county, upon application of said commissioners, to issue an attachment for such witness, and compel
321 him to attend before the commissioners and give his testimony upon such matters as shall be lawfully required by such commissioners, and said court shall have power to punish for contempt, as in other cases of refusal to obey the process and order of such court.

(Railroad officers to report to commissioners.)

SEC. XVI. That every officer, agent, or employee of any railroad company who shall willfully neglect or refuse to make and furnish any report required by the commissioners, as necessary to the purpose of this act, or who shall willfully and unlawfully hinder, delay, or obstruct said commissioners in the discharge of the duties hereby imposed upon them, shall forfeit and pay a sum not less than one hundred, nor more than five thousand dollars for each offence, to be recovered in an action of debt in the name of the State.

SEC. XVII. That all laws militating against this act are hereby repealed.

Approved, October 14, 1879.

8764

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EXHIBIT No. 7.—Filed

Comparative statement of receipts and di

Year.	Receipts					
	From passenger.	From freight.	From mail.	From express.	From other sources.	Total.
From Dec. 27, '90, to July 1, '91	141,504.92	605,495.16	25,383.03	10,277.15	11,940.96	794,601.22
1892	308,298.01	1,142,271.68	49,791.30	23,252.21	36,707.42	1,560,320.62
1893	285,049.52	988,413.21	52,041.21	21,562.79	49,233.69	1,396,300.42
1894	267,337.79	899,097.43	51,603.08	17,486.24	55,248.75	1,290,773.29
1895	236,551.52	978,807.48	51,758.63	17,189.70	51,474.20	1,335,781.53
1896	341,112.07	1,106,208.65	51,395.40	20,551.85	49,194.64	1,568,462.61

by G. R. Knox, p. 162.

bursements on Western and Atlantic R. R.

Disbursements.						Surplus.	Expenses for rails, ties, bridges, etc.	Net deficit.	Net surplus.
Operating expenses.	Net earnings.	Rental.	Interest.	Taxes.	Total.				
660,114.57	134,486.65	214,522.26	.....	.....	214,522.26	.....	102,384.86	22,349.25	.....
1,084,829.13	475,481.49	420,012.00	.....	12,006.87	432,018.87	43,462.62	365,675.37	322,212.75	.....
955,540.95	440,659.47	420,012.00	.....	9,948.23	429,960.23	10,699.23 Deficit.	180,675.62	169,976.39	.....
823,623.48	457,149.81	420,012.00	37,968.37	8,148.95	466,129.32	8,979.51 Surplus.	13,875.98	22,855.49	.....
838,788.73	496,992.80	420,012.00	36,000.00	8,342.07	464,354.07	32,638.73	.....	.....	32,638.73
961,564.31	606,898.30	420,012.00	36,000.00	7,526.82	463,538.82	143,359.48	.....	.....	143,359.48

Year.	Total number tons hauled one mile.	Average receipts per ton per mile.	Total number tons hauled.	Average amount received per ton.	Earnings per train mile on N. & C. W. & A. would be less.	Estimated cost of running freight train one mile.
		Cents.				*Cents.*
Dec. 27, '90, to June 30, '91 ...	60,676,103	.0100	537,347	$1.1268	.....	.76
1892.....	123,488,111	.00998	1,128,190	1.0124	$1.51	.76
1893.....	107,246,626	.00927	1,044,814	.9460	1.67	.76
1894.....	96,106,063	.00891	914,255	.9371	1.48	.76
1895.....	120,790,267	.00810	1,076,536	.90922	1.38	.76
1896.....	133,058,430	.00831	1,281,840	.86298	1.31	.76

323 *Statement of average receipts per ton per mile, etc., of various railroads.*

Name of road.	1892.		1893.		Average receipts per ton per mile.		
	Average receipts per ton per mile.	Estimated cost of carrying one ton one mile.	Average receipts per ton per mile.	Estimated cost of carrying one ton one mile.	1894.	1895.	1896.
I.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
1. Louisville & Nashville R. R	.948	.621	.917	.614	.876	.831	.86
2. Nashville, Chattanooga & St. Louis Ry.	1.035	.599	1.067	.610	1.043	.920	.92
3. Cincinnati, New Orleans & Texas Pac. Ry	.779	.571	.745	.576	.757	.724	.72
II.							
1. Pennsylvania R. R	.647	.448	.620	.447	.606	.565	.56
2. New York, New Haven & Hartford R. R.	1.747	1.425	1.867	1.477	1.864	1.658	1.70
3. Pittsburg, Cincinnati, Chi. & St. L. Ry	.706	.551	.709	.557	.674	.602	.67
4. Fitchburg R. R	.925	.712	.923	.707	.895	.878	.86
5. West Shore R. R. (1)							
6. Lake Shore & Michigan Southern Ry	.602	.416	.599	.421	.587	.567	.59
7. Clev., Cin., Chi. & St. L. Ry	.710	.481	.701	.501	.649	.651	.63
8. New York, Chicago & St. Louis R. R.	.537	.438	.545	.443	.534	.533	.51
9. New York Central & Hudson River R. R	.690	.518	.701	.514	.733	.726	.69
10. Cumberland Valley R. R	1.285	1.058	1.206	.931	1.151	1.148	1.15
11. New York, Philadelphia & Norfolk R. R.	1.094	.885	1.057	.843	1.067	1.021	.97
III.							
1. East Tennessee, Virginia & Georgia Ry. (2)	.874	.675	.855	.597	.820	.594	.....
2. Norfolk & Western R. R	.545	.362	.516	.359	.472	.446	.44
3. Richmond & Danville R. R. (3)	1.355	.929	1.211	.933	1.128	.....	.....
4. Western & Atlantic R. R. (4)							
5. Central Railroad & Banking Co. of Ga. (5)	1.356	(6) .972	1.246	.963	1.279	1.183	1.19
6. Georgia Railroad & Banking Co. (7)							
7. Atlanta & West Point R. R	1.630	.931	1.631	1.037	1.743	1.726	1.65
8. Southern Ry. of Alabama						1.047	1.09
9. Western Ry. of Alabama	1.690	1.077	1.674	1.057	1.701	1.586	1.56

324 1. Financial report filed. Operations included in those of New York Cent. & Hud. Riv. R. R.

2. Report for 1892 covers period July 1 to June 24. Report for 1893 covers period June 25, 1892, to June 30, 1893. Report for 1895 for month ending July 31, 1894. Merged in Southern Ry. Aug. 1, 1894.

3. Reorganized as Southern Ry. June 18, 1894.

4. No report filed. Operations included in those of Nashv., Chat. & St. L. Ry.

5. Report for 1892 covers period Jan. 1 to March 4. Report for 1895 covers four months ending Oct. 31.

6. As figured by this office. No computation made by road.

7. Financial report filed. Operations included in those of Georgia R. R.

I, Edward A. Moseley, secretary of the Interstate Commerce Commission, hereby certify that the above is a true and accurate statement

from the reports of the carriers named therein for the years 1892 to 1896, inclusive, made to and on file with the Interstate Commerce Commission.

This the 20th day of October, 1897.

EDW. A. MOSELEY,
Secretary.

INTERSTATE COMMERCE COMMISSION,
DIVISION OF STATISTICS,
October 20, 1897.

Filing: Filed in clerk's office Oct. 27, 1897. O. C. Fuller, clerk.

325 *Opinion by Hon. Wm. T. Newman.*

In the circuit court of the United States for the northern district of Georgia.

In equity. At Atlanta.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE WESTERN & ATLANTIC RAILROAD COMPANY et al. — Rule No. 524.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE CLYDE STEAMSHIP COMPANY, THE Georgia Railroad & Banking Company, et al. — Rule No. 525.

THE INTERSTATE COMMERCE COMMISSION *vs.* THE CLYDE STEAMSHIP COMPANY, THE Atlanta & West Point Railroad Company, et al. — Rule No. 526.

L. A. SHAVER,
Solicitor for the Interstate Commerce Commission.

ED. BAXTER,
Solicitor for Defendants, as of record.

NEWMAN, district judge:

On the 16th day of October, 1891, L. N. Trammell, Allen Fort, and Virgil Powers, constituting the railroad commission of Georgia, filed with the Interstate Commerce Commission a petition setting up a violation on the part of the above-named defendants of section 4 of the act of Congress entitled "An act to regulate commerce."

The petition, after setting out that the defendants are common carriers engaged in transporting goods from Cincinnati, O., to points in Georgia, and therefore subject to the act to regulate commerce, complains that the rates charged on freight from Cincinnati and other Ohio River points to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, local stations on the line of the Western & Atlantic Railroad, in Georgia, are greater than the rates charged to Atlanta, the eastern terminus of the Western & Atlantic Railroad, and a longer distance point. It was alleged that the transportation to Atlanta and to the local

stations named was under substantially similar circumstances and conditions. The petition further stated that Marietta is 20 miles west of Atlanta and 118 miles east of Chattanooga, that Acworth
326 is 35 miles west of Atlanta and 103 miles east of Chattanooga, that Cartersville is 48 miles west of Atlanta and 90 miles east of Chattanooga, that Kingston is 59 miles west of Atlanta and 79 miles east of Chattanooga, that Adairsville is 69 miles west of Atlanta and 69 miles east of Chattanooga, and that Calhoun is 78 miles west of Atlanta and 60 miles east of Chattanooga; that the rates of freight charged, collected, and received by the defendants for freight transportation by continuous carriage from the city of Cincinnati and other Ohio River points to the towns and stations above-named were more and greater on each class than the amount charged and received for freight to the city of Atlanta, which is a greater distance from the city of Cincinnati; that, therefore, the rates are unreasonable and discriminating in their nature; that they have called the attention of the officials of the Western & Atlantic Railroad Company to the fact, and that they have refused and declined to change the same.

The prayer of the petition is as follows: "Whereupon petitioners, as the railroad commission of the State of Georgia come and present the facts as aforesaid, and appeal to the Interstate Commerce Commission for relief, and aver and charge that the aforesaid through rate of freight into the State of Georgia and to the different towns and stations on the Western & Atlantic Railroad, so made, charged, and collected by the carriers as aforesaid, is unreasonable and discriminating in its nature, and is in direct violation of section 4 of the act of Congress entitled 'An act to regulate commerce.'"

Answers were filed by the defendants, in which substantially they denied that the transportation to Atlanta and the other points named was under substantially similar circumstances and conditions, or that the rates were unjust and discriminating.

After hearing the parties, the Interstate Commerce Commission, on November 11, 1892, filed its report and opinion, and made an order in which it required the railroad companies to desist from the acts complained of in the petition of the Georgia railroad commission.

On the 27th day of May, 1893, the Interstate Commerce Commission filed its bill in this court, alleging that the defendant railroad companies had refused and still refuse to comply with the orders so made by it, asking that said order be enforced and that the defendant railroad companies be enjoined in accordance with its decision and order.

The particular act, therefore, which it is claimed constitutes a
327 violation of section 4 of the act to regulate commerce is the charging and receiving greater compensation in the aggregate for the transportation of a like kind of property from Cincinnati and other points, called and known as Ohio River points, for a shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta, in the State of Georgia, than for a longer distance over the same line in the same direction to Atlanta, also in the State of Georgia, the shorter being included within the longer distance. The claim, of course, is, and the conclusion of the commission was, that freight carried from Cincinnati, etc., to Atlanta, is carried under substantially similar circumstances and

conditions as freight carried to the shorter distance points named; and this violation of section 4 has been the only question raised prior to this hearing, as shown by the record. If the circumstances and conditions at Atlanta are substantially similar to those at Marietta and the other shorter distance points named, it is conceded to be a violation of section 4 of the act to regulate commerce; if the circumstances and conditions at Atlanta are substantially dissimilar, within the meaning of the act, to those at the shorter distance points, then it is conceded that the fourth section is not violated. As bearing upon this question, and, indeed, as determining it, the question discussed in this case, as in several other cases, has been whether or not competition with other carriers subject to the act to regulate commerce, at longer distance points, is sufficient to make the carriage to such points under dissimilar circumstances and conditions.

The record in this case show that the rate on first-class goods per 100 pounds, in 1892, and at prees'nt, are as follows: From Cincinnati to Chattanooga, 76 cents; to Calhoun, $1.09; to Adairsville, $1.12; to Kingston, $1.15; to Cartersville, $1.18; to Acworth, $1.24; to Marietta, $1.27; and to Atlanta, $1.07. The rate to the six local points named is made up of the through competitive rate to Chattanooga, Tenn., within the local rate authorized by the Georgia railroad commission from Chattanooga to the points named added. The plan of rate making in Georgia to local noncompetitive stations is to add to the through competitive rate the local rate authorized by the Georgia railroad commission; and when made in this way, the above rate are the result.

After the case was at issue in this court, evidence was taken both for the commission and the railway companies. The evidence for the commission was that of merchants at the local stations on the Western & Atlantic Railroad. Their evidence tended to show that
328 they were put at a disadvantage at their respective places of business by reason of the lower rate to Atlanta, and that injury had resulted to business at these points by reason of the Atlanta rate. The evidence for the railway companies was taken for the purpose of showing, and tends to show, that the rate to Atlanta is the result of active competition; also that the rates to the local stations named on the Western & Atlantic Railroad were just and reasonable rates in and of themselves; also that a lower rate to the local stations would not materially affect the amount of goods carried to those stations or the volume of business transacted. The testimony is of considerable length, and no attempt will be made to quote from the evidence for either side, except from the testimony of one witness, out of a number, as to competition existing at Atlanta. Mr. J. M. Culp, the general traffic manager of the Southern Railway, was a witness for the defendants, and the following extract is taken from his testimony, by questions and answers:

"Q. State whether the rates or freight from Ohio River points to Atlanta are controlled by any, and if so, to what, extent by competition."

"A. They are entirely controlled by competition. They are controlled by competition between the railroads themselves, the railroads leading from the Ohio River themselves, and controlled by competition from the eastern seaboard. The adjustment of rates on certain of the classes is based upon the same rates from Cincinnati to Atlanta as from Baltimore

to Atlanta. This is not true of all classes, but it is true of a number of classes."

"Q. State whether there is any such competition at Calhoun, Adairsville, Kingston, Cartersville, Acworth, and Marietta as exists at Atlanta, Ga."

"A. There is not the same competition. There is competition existing up to Chattanooga—strong competition—and the rates fixed by that competition are used in making rates to these local stations. As I have before testified, to these competitive rates up to Chattanooga are added the rates which are the same for the same distance as the rates of the Georgia commission."

While the testimony varies somewhat, the above is in line with the testimony of all the witnesses for the defendant who testified on the subject.

The present case was heard and decided by the Interstate Com-
329 merce Commission in 1892. At that time there had been no authoritative determination of the question as to whether or not competition at a longer-distance point would render the carriage of freight to such point under substantially dissimilar circumstances and conditions from those existing at a shorter-distance point within the meaning of the fourth section of the act to regulate commerce. Since that time several cases have been before the Supreme Court and the question thoroughly discussed. It appears to be now finally settled by the decision of the Supreme Court in the case of The Interstate Commerce Commission vs. Alabama Midland Railway Company, 168 U. S., 144. In that case the substance of the decision by the Supreme Court may be gathered from a headnote as follows:

"Competition is one of the most obvious and effective circumstances that make the conditions under which a long and short haul is performed substantially dissimilar, and as such must have been in the contemplation of Congress in the passage of the act to regulate commerce. This is no longer an open question in this court."

In the case of The Savannah Bureau of Freight and Transportation vs. Charleston & Savannah Ry. Co., 7 I. C. Reports, 479, the Interstate Commerce Commission, speaking of this decision in the Alabama Midland case, used the following language:

"The Commission has uniformly held up to the present time that this species of competition does not create the necessary dissimilarity of circumstances and conditions under that section, and such would have been its decision in this case upon the law as it was supposed to be when the findings of fact were prepared. Since then, however, the Supreme Court of the United States, by its decision in the case Interstate Commerce Commission v. Alabama M. R. Co., decided November 8, 1897, 168 U. S., 144, ... has determined that this view of the law is erroneous, and that railway competition may create such dissimilar circumstances and conditions as exempt the carrier from an observance of the long and short haul provision. Under this interpretation of the law as applied to the facts found in this case, we are of the opinion that the charging of the higher rate to the intermediate points, as set forth, is not obnoxious to the fourth section. The section declares that the carrier shall not make the higher charge to the nearer point

under 'substantially similar circumstances and conditions.' If the conditions and circumstances are not substantially similar, then the section does not apply and the carrier is not bound to regard it in the making of its tariffs. The court has decided that railway competition, if it exists, must be considered. If, therefore, such competition does actually control the rate at the more distant point, that rate is not made under the same circumstances and conditions as is the rate at the intermediate point, and the higher rate is not prohibited by the fourth section."

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In the 11 Annual Report of the Interstate Commerce Commission, page 37, the Commission discussed the Alabama Midland Railway case, decided by the Supreme Court, as follows:

"It is stated in the foregoing pages that there was pending before the Supreme Court of the United States a case arising under the fourth section. . . . . Since the above was written that case has been decided adversely to the contention of the commission. It is proper, therefore, to further state the nature and bearing of that decision.

"The case is entitled 'Interstate Commerce Commission v. The Alabama Midland Railway Company and others,' and was decided November 8, 1897. The original complaint was brought by the Board of Trade of Troy, Ala., against the Alabama Midland Railway Company and the Georgia Central Railroad Company and their connections. The facts, in brief, are these: Troy, Ala., is situated upon the Alabama Midland Railway 52 miles east of Montgomery. Rates from all points in the East and Northeast are higher to Troy than to Montgomery via the Alabama Midland, although the traffic over that line passes through Troy on its way to Montgomery. Rates on cotton from Troy to eastern seaports, like Savannah, are higher than rates on cotton from Montgomery, although the Montgomery cotton passes through Troy upon its way to Savannah.

"There were other questions in the case, but these sufficiently illustrate what was decided in reference to the fourth section. Troy is reached by two railroads, the Alabama Midland and the Georgia Central, and both these lines actually compete at that point for all kinds of traffic. Montgomery is the converging point several lines of railway, which also compete for all kinds of traffic. The defendants claimed that the lower rate at Montgomery was justified and made necessary by this competition between the different lines centering there, which did not affect the rate to Troy.

"The fourth section provides that more shall not be charged for the short than for the long haul when the transportation is under 'substantially similar circumstances and conditions.' The defendants insisted that the fact of railway competition at Montgomery made the circumstances and conditions at Troy and at Montgomery dissimilar, and that, therefore, the inhibition of the fourth section did not apply. The commission had held in many previous cases, and held in this case, that railroad competition between carriers subject to the provisions of the act could not of itself create the necessary dissimilarity in circumstances and conditions. This contention is not sustained by the Supreme Court, which holds that such competition does create that dissimilarity, and that the higher rate to Troy is not prohibited by the fourth section."

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Then, after discussing at some length the origin of this section, the views of the commission, its purposes, etc., it states (page 43):

"This language is intelligible as to the third section, but we are at a loss to understand how it can be applied to the fourth. That section enacts that the carrier shall not charge more for the short than for the long haul under substantially similar circumstances and conditions. . . . . If the circumstances and conditions are not similar the section does not apply. The court holds that railway competition of controlling force makes the circumstances dissimilar. If, therefore, we find in a particular case that competition of controlling force actually exists, that ends the matter. We have no power to say whether, nor to what extent, such competition justifies the higher rate to the intermediate point.

"The third section is still left, and under that section we may inquire whether, under all the circumstances, the rates as adjusted give an undue preference to the competitive point, but the fourth section is by this decision eliminated from the act."

In view of the foregoing statements made by the Interstate Commerce Commission in its report and in the decision of the Savannah Freight Association case, it may be reasonably assumed that the Commission itself would not now, upon the record and facts, decide in the case under consideration that the fourth section of the act was violated.

Examining the question of the existence of such competition at Atlanta as is necessary to justify the lower rate, we find that the Interstate Commerce Commission has expressed itself in this case. In its report and opinion in the present case the commission stated:

"The present adjustment of rates to Atlanta is the outcome of
332 severe competition between lines leading from competing markets, like St. Louis, Baltimore, Cincinnati, etc., and, with some modifications occurring from time to time, has been in effect for a considerable period."

If competition generally with other lines renders the circumstances and conditions of the haul dissimilar, severe competition would seem to make it beyond question.

As a matter of general public knowledge, Atlanta is many times as large as either of the points on the Western & Atlantic Railroad as to which complaint is made. It is also well known, and is disclosed by the evidence, that at Atlanta several different lines of railroad compete actively for business, and not only is competition active between carriers, but also between markets competing for the Atlanta business. Goods may be brought by water from New York, Philadelphia, Baltimore, and other Eastern points, by steamer to Charleston, Brunswick, and Savannah, and thence by competing lines of railway to Atlanta. From similar points in the North and East there are also competing lines of rail. From points in the middle North and the great Northwest there is competition by rail and partly by water routes. Eight lines of railroads enter Atlanta. Its commercial and manufacturing interests are large and varied. At the local points on the Western & Atlantic Railroad mentioned there is very little, if any, competition. It must be apparent at a glance that the conditions under which transportation is effected to Atlanta, and at any of the local stations, are entirely different. Assuming, therefore, what is now clearly decided, that competition may distin-

guish the circumstances, and should be considered in determining whether a given rate is obnoxious to the fourth section of the act to regulate commerce, it seems clear that the rates complained of in this case are not violative of that section.

In the case of Brewer vs. The Central of Georgia Railway Company, 84 F. R., 258, in a recent decision of Judge Speer, of the southern district of Georgia, it is held that the competition existing at Macon, Ga., is such as to distinguish the circumstances and conditions of transportation to that city from those existing at Griffin, and a construction is given the fourth section of the act in accordance with what has been hereinbefore expressed. Judge Speer, in concluding his opinion, aptly says:

"Shall government undertake the impossible but injurious task of making the commercial advantages of one place equal to those of
333 another? It might as well attempt to equalize the intellectual powers of its people. There should be no attempt to deprive a community of its natural advantages, or those legitimate rewards which flow from large investments, business industries, and competing systems of transportation to facilitate and increase commerce. The act to regulate interstate commerce has no such purpose, and yet this appears to be the inevitable result of the relief the complainants seek in this case, without any adequate corresponding advantage either to themselves or to the community in which they live."

It is said, however, that even if the rates in question here are not objectionable under the fourth section of the act, the charges made to Calhoun, Kingston, Adairsville, Cartersville, Acworth, and Marietta are, in and of themselves, unjust and unreasonable, and as such come within the prohibition of the first section of the act referred to. That section provides that "all charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful." It has been stated already that the charge originally made in this case, and the one to which evidence was directed, hearings had, and orders made, up to the present time, was the violation of the fourth section of the act, and that the charges made to the local stations on the Western & Atlantic Railroad relatively to the charge made at Atlanta were in violation of that section.

But there is no evidence whatever to justify a finding that the rates charged to Calhoun, Kingston, Adairsville, Cartersville, Acworth, and Marietta are unjust and unreasonable in and of themselves. It is argued that the fact that the rate to Atlanta is said to be a reasonable and just rate by the witness for the defendant, that the rates to the other points, being higher, must be unreasonable. The witnesses speak of the rate to Atlanta as a part of a general system of rates, and a fair construction of their evidence is that they are spoken of as reasonable in connection with this general system of rate making. These witnesses testify, in response to questions of counsel for complainant, that the rate to Atlanta pays something above the cost of the service of carriage. It is doubtful as to what this expression means and as to what it includes; whether it relates simply to the cost connected immediately with the transportation

of the goods, or whether it embraces all of the cost to the railroad company, including its fixed charges, etc.; but, either way, the fact that the rate to Atlanta is reasonable does not show that the other rates are unreasonable.

334 It is said also that the fact that a part of the rate to Calhoun, Kingston, Adairsville, Cartersville, Acworth, and Marietta is the local rate fixed by the Georgia railroad commission for local hauls shows that it is unreasonable. The rates to these points are made up of a highly competitive rate to Chattanooga with the local rate added. The testimony is that each is reasonable of itself. In the Alabama Midland case, in the circuit court of appeals (74 F. R., 723), in reply to a question of this sort raised in that case, it is said: "The rates in question, when separately considered, are not unreasonable or unjust." The facts here being similar, the conclusion should be the same.

It is further urged that this bill should be sustained upon the ground that the rates complained of violate the third section of the act in that there is an undue preference and advantage in favor of the longer distance point, and an unreasonable prejudice or disadvantage against the shorter distance point. It was said by this court, in the case of I. C. C. vs. Cincinnati, New Orleans & Texas Pacific Railway, 56 F. R., 925, as follows:

"As to the question of undue preference, under section 3 of the act to regulate commerce, it may be stated that unless the traffic involved here is obnoxious to the fourth clause of the act, it can hardly be said to be an undue preference in favor of Augusta, or an undue prejudice or disadvantage against Social Circle. In the Party Rate case (Interstate Commerce Commission v. Baltimore & O. R. Co., 145 U. S., 263), the Supreme Court say: 'But so far as relates to the question of 'undue preference,' it may be presumed that Congress in adopting the language of the English act had in mind the constructions given to these words by the English courts, and intended to incorporate them into the statute * * * In short, the substance of all these decisions is that railway companies are only bound to give the same terms to all persons alike, under the same conditions and circumstances, and that any fact which produces an inequality of condition and a change of circumstances justifies an inequality of charge.' So that, unless the rates complained of, as compared with each other, violate the fourth section of the act, there seems to be very little ground for claiming that they violate the 'undue preference' provision of the third section."

There might be, of course, a case of undue preference on the one hand and undue prejudice on the other in connection with a charge for a greater rate for the shorter than for the longer haul, but the evidence

335 here fails to show that there is any undue preference in favor of the longer distance point. The evidence shows that the rate to Atlanta is forced on the railroad officials by competition. There is no evidence whatever of any improper desire on the part of the officials to give Atlanta a lower rate, or the local points a higher rate. The matter is controlled by existing competitive conditions.

Counsel for the commission, in his able brief, invites the attention of the court to the fact that "violations of the long and short haul rule of section 4 are only a species of undue preference in rates between localities, and that such violations fall within the purview of the provisions of sec-

tion 3 forbidding undue preference between localities, and would have been unlawful under that section, although not specifically denounced in section 4. Congress, therefore, in making the greater charge for the shorter than the longer haul the subject of specific denunciation in a distinct section of the law, only intended to emphasize its disapprobation of that particular species of undue preference in rates between localities, and to point it out as one of the principal evils which called for remedial legislation, and which the commerce law was especially designed to remedy." But Congress, by the fourth section, intended to establish a test as to the lawfulness or unlawfulness of charges in connection with the long and short haul. Where, under the terms of the section distinctly and specifically dealing with the long and short haul question, certain rates are legal, we can not turn to another broader and more comprehensive part of the law and determine them to be illegal. If the lesser charge to the longer distance points results from dissimilar circumstances and conditions brought about by competition, it can not be said to be a preference which is undue or unreasonable.

Attention has been called by counsel for the commission to a recent decision by Judge Severens, in the circuit court for the eastern district of Tennessee, at Chattanooga, in the case of I. C. C. vs. E. T., V. & G. R. Co., 85 F. R., 107, and special stress is laid on the part of the opinion of Judge Severens, as follows:

"Now, I do not understand that such a conclusion follows from that decision. [Decision of the Supreme Court in the Alabama Midland case.] On the contrary, I suppose that when a violation of the long and short haul provision is charged, competition is one of the elements which enter into the determination whether the conditions are similar, and if dissimilarity is found, then the further question arises whether the dissimilarity is so great as to justify the discrimination which is complained of. The language of the act ought not to be tied up by such literal construction. If it were, then if it should be found that the dis-
336 similarity of conditions is really in favor of the locality discriminated against, the provision would not apply,—a result contrary to the manifest intent. In other words, my opinion is that the restraint of section 4 is to be applied upon the scale of comparison between the dissimilarity of conditions and the disparity of rates, and that it is competent under that section to restrain the exaction of the greater charge for the shorter haul, although there may be a substantial dissimilarity of conditions, provided the dissimilarity is not so great as to justify the discrimination made."

This view of the law suggested by Judge Severens, it is submitted with the utmost deference, is not the view adopted by the courts, or indeed by the Interstate Commerce Commission itself. The view generally entertained is that if the circumstances and conditions at the longer distance point are substantially dissimilar from those at the shorter distance point, then the fourth section of the act is inapplicable.

In the case of the Interstate Commerce Commission v. L. & N. R. R. Co., 1 I. C. C. Reps., page 57, speaking through Judge Cooley, with reference to the phrase, "under substantially similar circumstances and conditions," in the fourth section of the act, the Commission says:

"If the circumstances and conditions of the two hauls are dissimilar, the statute is not violated."

In the 11 Annual Report, embraced in the language heretofore quoted, is the expression by the Commission:

"If, therefore, we find in a particular case that competition of controlling force actually exists, that ends the matter. We have have no power to say whether, nor to what extent, such competition justifies the higher rate to the intermediate point."

The language of the Commission in the Louisville & Nashville case has been quoted with approval by Judge Ross in I. C. C. v. A. T. & S. F. R. R. Co., 50 F. R., 300, and by Judge Simonton in Behlmer v. L. & N. R. R. Co., 71 F. R., 839. Alabama Midland case, supra.

In the opinion of the circuit court of appeals for the fifth circuit, 74 F. R., 723, in the Alabama Midland case, by Circuit Judge McCormick, this occurs:

337 "Within the limits of the exercise of intelligent good faith in the conduct of their business, and subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or disadvantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers, as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as meet the necessities of commerce and of their own situation and relation to it, and generally, to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits. The carriers are better qualified to adjust such matters than any court or board of public administration, and, within the limitations suggested, it is safe and wise to leave to their traffic managers the adjusting of dissimilar circumstances and conditions to their business."

In the same case, in the Supreme Court, this language of the circuit court of appeals is drawn in question, and in the opinion by Justice Shiras, for the Supreme Court, 168 U. S., 173, it is said:

"The last sentence in this extract is objected to by the Commission's counsel, as declaring that the determination of the extent to which discrimination is justified by circumstances and conditions should be left to the carriers. If so read, we should not be ready to adopt or approve such a position. But we understand the statement, read in the connection in which it occurs, to mean only that, when once a substantial dissimilarity of circumstances and conditions has been made to appear, the carriers are, from the nature of the question, better fitted to adjust their rates to suit such dissimilarity of circumstances and conditions than courts or commissions; and when we consider the difficulty, the practical impossibility, of a court or a commission taking into view the various and continually changing facts that bear upon the question, and intelligently regulating rates and charges accordingly, the observation objected to is manifestly just. But it does not mean that the action of the carriers, in fixing and adjusting rates, in such instances is not subject to revision by the Commission and the courts, when it is charged that such action has resulted in rates unjust or unreasonable, or in unjust discriminations and preferences."

The meaning of this must be that where the circumstances and conditions at the longer distance point are substantially dissimilar, the carrier may judge of this for itself, in the first instance, and fix the rates
338 for the longer distance point without violating the fourth section

of the act, but this does not preclude the courts or the commissions from inquiring as to whether the rates to the shorter-distance points are unjust or unreasonable, or whether they constitute undue preference for or unjust prejudice against any locality.

It may be said finally that in order to constitute dissimilarity under the fourth section of the act the competition must be real, and not imaginary or trifling, and to this effect are all the decisions on the subject.

It is conceded that the second section of the act is wholly inapplicable here, in that it deals with preferences as between shippers, and not as between localities.

The conclusions reached in this case are:

1. It is shown by the evidence and by the record that competition at Atlanta is active and effective and controls in the making of the rates in controversy to Atlanta, and that there is little or no competition at any of the local points as to which complaint is made by the Georgia commission. Consequently the haul to Atlanta is not under circumstances and conditions substantially similar to those at the other localities, and therefore the fourth section of the act is not violated.

2. There is nothing whatever in the evidence or in the record from which it can be justly concluded that the rates to any of the local points named are, in and of themselves, unjust and unreasonable, in violation of the first section of the act.

3. The evidence fails to show that the rates complained of violate the third section of the act. The only complaint made, and all that the evidence shows, is that the rate to Atlanta, the longer-distance point, is less than the rate to these shorter-distance points; and as the rate to Atlanta is shown to have been brought about by and to be the results of active competition at that point, it can not be held to be a preference which is undue or unreasonable in favor of Atlanta, or to subject the local points named to any undue or unreasonable prejudice or disadvantage.

Entertaining the foregoing opinion of the case, the court must deny the injunction prayed for to restrain the continuance of the rates in question.

This June 15, 1898.

WM. T. NEWMAN, *U. S. Judge.*

Filed in clerk's office 15th day of June, 1898. O. C. Fuller, clerk, by J. D. Steward, deputy clerk.

339 *Final decree.*

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN AND ATLANTIC RAILROAD COMPANY, THE Louisville & Nashville Railroad Company, The Nashville, Chattanooga & St. Louis Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company, Lessee of the Cincinnati Southern Railway Company; The Cincinnati Southern Railway Company and S. M. Felton, receiver. } No. 524.

This cause came on to be heard before Hon. Wm. T. Newman, judge, etc., upon the petition or bill, the answers thereto, exhibits, the testimony, stipulations, and argument of counsel.

Whereupon, upon consideration thereof, it is ordered, adjudged, and decreed by the court that the matters of equity alleged in the petition or bill are fully denied in the answers and are not sustained by the proof, and therefore that the said petition or bill be dismissed and that the injunction prayed for therein be refused.

It is further ordered, adjudged, and decreed by the court that the costs of this cause shall be taxed by the clerk to be paid out of the appropriation for expenses of the courts of the United States, as provided in section 16 of the act to regulate commerce.

In open court July 6, 1898.

WM. T. NEWMAN, *U. S. Judge.*

Filing: Filed in clerk's office 6 day of July, 1898. O. C. Fuller, clerk.

Petition for appeal and grant of appeal.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN AND ATLANTIC RAILROAD Company et al. } In equity, No. 524.

Comes the Interstate Commerce Commission this the 6th day of July, 1898, by G. L. Bell, assistant United States attorney, and in open court applies for an appeal from the final decree therein to the United States circuit court of appeals for the fifth circuit, and the said petitioner, the Interstate Commerce Commission of the United States, being a
340 department of the Government, and this appeal being entered as such, and it appearing that the matter in dispute in said cause exceeds the sum or value of five thousand dollars, exclusive of costs, it is therefore ordered that said application for appeal be, and the same is, hereby granted and made returnable not exceeding thirty days from this date, and that the same be filed in this court.

This, the 6th day of July, 1898.

WM. T. NEWMAN,
United States Judge.

Filing: Filed in clerk's office 6' day of July, 1898. O. C. Fuller, clerk.

Assignment of errors.

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION
vs.
WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

Comes the Interstate Commerce Commission by Geo. L. Bell, assistant United States attorney, and by L. A. Shaver, its solicitor, and says that in the decree rendered by said circuit court in the above-entitled cause

on the 6th day of July, 1898, and in the record and proceedings in said court there is manifest er'or in this, to-wit:

1. Said court erred in decreeing that the bill or petition of the Interstate Commerce Commission be dismissed.

2. Said court erred in not granting the relief prayed for in the said bill or petition of the Interstate Commerce Commission.

3. Said court erred in not rendering a decree for the enforcement of the order of said Commission.

4. Said court erred because it decided and held that the only question raised prior to the hearing before said court was as to a violation of section four of the act to regulate commerce.

5. Said court erred because it held that there was a substantial dissimilarity of circumstances and conditions resulting from competition at the longer distance point, which justifies lower rates to such longer distance points than to the shorter distance points in this case.

341 6. Said court erred because it held that "the question discussed in this case was whether or not competition with other carriers subject to the act to regulate commerce at the longer distance point is sufficient to make the carriage to such point under dissimilar circumstances and conditions."

7. Said court erred because it held, in effect, that when once a substantial dissimilarity of circumstances and conditions resulting from competition in transportation to the longer distance point is shown the rule of the fourth section does not apply, although the rates to the shorter distance points are excessive in themselves, and although it might appear that due allowance would be made for such dissimilarity of conditions by making the rates to the shorter distance point as high as to the longer distance point.

8. Said court erred in holding "that there is no evidence whatever in this case to justify a finding that the rates charged to the shorter distance points are unjust and unreasonable in and of themselves."

9. Said court erred in holding that "the witnesses for the respondents testified in response to questions of counsel for complainant that the rate to the longer distance point pays something above the cost of the service of carriage."

10. Said court erred in ignoring the testimony of witnesses for the respondents in response to questions of counsel for complainant, that the rates to the longer distance point are reasonable "in and of themselves" and "yield the carrier a reasonable and proper re*mu*neration above the cost of the service of carriage."

11. Said court erred in holding, in effect, that the testimony showed that the local rates, established by the Georgia railroad commission and by combination with which the through rates to the shorter distance points are made, were reasonable as proportions or parts of such through rates.

12. Said court erred in holding, in effect, that local rates shown by the proof to have been fixed with a view of covering the extra expense of strictly local hauls were reasonable as proportions or parts of through rates.

13. Said court erred in holding that "if the lesser charge to the long distance point results from dissimilar circumstances and conditions

342 brought about by competition, it can not be said to be a preference

which is undue or unreasonable" under section three of the act to regulate commerce.

14. Said court erred in holding, in effect, that where the long and short haul rule of section four of the law does not apply, the provisions of section three of the law forbidding undue preferences in rates as between localities can not apply.

15. Said court erred in holding, in effect, that where a substantially dissimilarity of circumstances and conditions resulting from competition is shown, the amount of the discrimination justified by such dissimilarity of conditions is to be left to the determination of the carrier.

16. Said court erred in holding that "the evidence fails to show that the rates complained of violate the third section of the act to regulate commerce."

17. Said court erred in holding "that there is little or no competition at any of the local points" (short-distance points in this case), the rates to which are involved in this case.

18. Said court erred in holding, in effect, that the only testimony in this case for the complainant was testimony of merchants at the shorter distance points and in ignoring the testimony of the Hon. Allen Fort, a member of the Georgia railroad commission, and of Jesse M. Smith, auditor of the Interstate Commerce Commission.

GEO. L. BELL,
Ass't. U. S. Dist. Atty.
L. A. SHAVER,
Solicitor for Interstate Commerce Commission.

Filing: Filed in clerk's office 6th day of July, 1898. O. C. Fuller, clerk.

343 *Citation.*

In the circuit court of the United States for the northern district of Georgia.

THE INTERSTATE COMMERCE COMMISSION,
vs.
THE WESTERN & ATLANTIC RAILROAD COMPANY et al. } In equity, No. 524.

To the Western & Atlantic Railroad Company; The Louisville & Nashville Railroad Company; The Nashville, Chattanooga & St. Louis Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway Company; The Cincinnati Southern Railway Company and S. M. Felton, receiver:

You are hereby cited and admonished to be and appear at the court room of the United States circuit court of appeals, for the fifth circuit at New Orleans, Louisiana, on the 6th day of August, 1898, pursuant to an appeal allowed and granted by the circuit court of the United States for the northern district of Georgia, at Atlanta, in the above-entitled case, to show cause, if any there be, why the decree of said circuit court of the United States for the northern district of Georgia, at Atlanta, rendered on the 6th day of July, 1898, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, Wm. T. Newman, United States district judge for the northern district of Georgia, this the 6th day of July in the year of our Lord one thousand eight hundred and ninety-eight (1898).

WM. T. NEWMAN,
U. S. Judge.

Service: Service of the above citation is hereby accepted and copy waived this the 24th day of July, 1898.

ED. BAXTER,
Solr. for Defendants, as of record.

U. S. circuit court. Filed in clerk's office July 6, 1898. O. C. Fuller, clerk.

344 UNITED STATES OF AMERICA,
Northern District of Georgia:

I, Olin C. Fuller, clerk of the circuit court of the United States of America for the northern district of Georgia, in the fifth circuit, do hereby certify that the foregoing pages, numbered from 1 to 644, inclusive, contain a full, true, and complete transcript of the record and proceedings had in said court in the case of the Interstate Commerce Commission against the Western and Atlantic Railroad Company, the Louisville and Nashville Railroad Company, the Nashville, Chattanooga and St. Louis Railway Company, the Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway, the Cincinnati Southern Railway Company, and S. M. Felton, receiver, as the same remains of record and on file in my office.

In testimony whereof, I have caused the seal of said court to be affixed, at the city of Atlanta, in the northern district of Georgia, in the fifth circuit, this 28th day of July, in the year of our Lord one thousand eight hundred and ninety-eight and of the independence of the United States the one hundred and twenty-second.

[SEAL.] OLIN C. FULLER, *Clerk.*

344a United States circuit court of appeals, fifth circuit.

November term, 1898.

[Extract from minutes.]

MONDAY, *December 19th, 1898.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE WESTERN & ATLANTIC RAILROAD CO., THE Louisville & Nashville Railroad Co., et al's., appellees. } No. 750.

This cause was regularly called this day, and was argued by Mr. L. A. Shaver for appellant and by Mr. Ed. Baxter for the appellees, when the further hearing was postponed until to-morrow.

November term, 1898.

[Extract from minutes.]

TUESDAY, *December 20, 1898.*

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE WESTERN & ATLANTIC RAILROAD CO., THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, et als., appellees. } No. 750.

This cause came on again to be heard this day, and was submitted to the court after further argument by Mr. L. A. Shaver for appellant and by Mr. Ed. Baxter for the appellees.

345 November term, 1898.

[Extract from minutes.]

MARCH 21, 1899.

Decree.

THE INTERSTATE COMMERCE COMMISSION
vs.
THE WESTERN & ATLANTIC RAILROAD CO., THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, et als. } No. 750.

This cause come on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Georgia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed that the decree of the said circuit court in this cause be, and the same is hereby, affirmed at the costs of the appellant.

346 United States circuit court of appeals, fifth circuit.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,
vs.
THE WESTERN & ATLANTIC RAILROAD CO., THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, et als., appellees. } No. 750.

Petition for appeals.—Filed April 12, 1899.

The Interstate Commerce Commission, by J. Ward Gurley, United States attorney, and L. A. Shaver, esq., solicitor of said Commission, under the direction of the Attorney-General of the United States, represents that in the final decree of said circuit court of appeals, rendered on the 21st day of March, 1899, there is manifest error to its injury; and therefore, being a department of the Government of the United States, it prays for an order granting an appeal from said decree to the Supreme Court of the United States.

J. WARD GURLEY,
United States Attorney for the Eastern District of Louisiana.

L. A. SHAVER,
Solicitor for the Interstate Commerce Commission.

347 United States circuit court of appeals, fifth circuit.

THE INTERSTATE COMMERCE COMMISSION, appellant,
vs.
THE WESTERN & ATLANTIC RAILROAD Co., The Louisville & Nashville Railroad Company, et als.
In equity, No. 750.

Assignment of errors.—Filed April 12, 1899.

And now comes the Interstate Commerce Commission, by J. Ward Gurley, United States attorney for the eastern district of Louisiana, and L. A. Shaver, esq., solicitor of said commission under the direction of the Attorney-General of the United States, and charges that in the decree rendered by said circuit court of appeals in the above-entitled cause on the 21st day of March, 1899, and in the record and proceedings in said court, there is manifest error to its injury in this, to wit:

1. Said circuit court of appeals erred in affirming the decree in said cause of the circuit court of the United States for the northern district of Georgia, dismissing the bill of complaint of the Interstate Commerce Commission.

2. Said circuit court of appeals erred in not reversing the decree in said cause of the circuit court of the United States for the northern district of Georgia.

3. Said circuit court of appeals erred in not rendering a decree for the enforcement of the entire order of the Interstate Commerce Commission involved in said cause.

4. Said circuit court of appeals erred in not rendering a
348 decree for the enforcement of the order of said Commission as to each of the shorter distance points, the rates to which were involved in said cause.

5. Said circuit court of appeals erred in holding that "the Commission was not" (in the proceedings before it) "called upon to find whether the respective rates in question were reasonable and just or not."

6. Said circuit court of appeals erred in holding that the commission, in the proceedings before it, "was not called upon to find whether the rates charged to the shorter distance points gave an undue or unreasonable preference or advantage to the longer distance points, or subjected the shorter distance points to an undue or unreasonable prejudice or disadvantage in any respect whatever."

7. Said circuit court of appeals erred in holding in effect "that on applications like this, the courts are limited to a review of the grounds on which the commission acted and have not and should not exercise jurisdiction on the whole subject-matter and on the law and facts determine whether the tariff of rates complained of is just and reasonable, and whether it gives any undue or unreasonable preference to the longer distance points, or subjects the shorter distance points to any undue or unreasonable prejudice or disadvantage."

8. Said circuit court of appeals erred in holding in effect that rates established by agreement between competing carriers are the result of or fixed by competition, and not the result of or fixed by such agreement.

9. Said circuit court of appeals erred in holding that "a careful construction of the circumstances and conditions shown by the proof constrains to the conclusion that the difference in the circumstances and conditions has caused the difference that is complained of in the rates."

349 10. Said circuit court of appeals erred in holding that the dissimilarity of conditions resulting from competition at the longer distance points is so great as to justify the discrimination in rates complained of against the shorter distance points, which are "junction points reached by more than one railroad."

11. Said circuit court of appeals erred in holding that "the most careful consideration of the testimony brought up in the records in these causes does not disclose any evidence that was offered by the appellant in the circuit court tending to show that the rates, separately considered, to the respective points are not reasonable and just."

12. Said circuit court of appeals erred in holding that "the great volume of testimony given by the witnesses for the appellees is directly and clearly to the effect that the rates are reasonable and just."

13. Said circuit court of appeals erred in holding that the fact as to whether or not rates are reasonable and just "is hardly susceptible of better proof than the opinions of 'railroad officials.'"

14. Said circuit court of appeals erred in holding that the fact that rail rates are lower "than can be obtained by any other means of transportation" is evidence of their reasonableness.

15. Said circuit court of appeals erred in holding that the facts that the rates in question "have not prevented the shipment of freights," and "traffic has been shipped under them with profit," are evidence of the reasonableness of such rates.

16. Said circuit court of appeals erred in holding that the fact that the rates to the shorter distance points are made up of (or based upon) the competitive rates to competitive points, and the local rates from such

350 competitive points to the shorter distance points is evidence of the reasonableness of the entire through rates to the latter points.

17. Said circuit court of appeals erred in holding in effect that rates to the longer distance competitive points which are not "fully remunerative have a tendency to reduce local rates and to improve the local service."

18. Said circuit court of appeals erred in holding that carriers have a right, on the ground of competition, to charge to competitive points rates which do not yield "a full measure of reasonable remuneration."

19. Said circuit court of appeals erred in holding that the appellant did not contend in said court that "the rates to any of the points, considered separately, are too high or too low, or are not reasonable and just."

20. Said circuit court of appeals erred in holding in effect that because the order of the commission "can not adequately meet the requirements of the first and third sections," it should not be enforced to the extent it does afford relief under those sections.

21. Said circuit court of appeals erred in holding in effect that the order of the commission should not be enforced, because under it the appellees may still, if they see proper, discriminate against the shorter distance points in favor of the longer distance point, to the extent of giving the former as high rates as the latter, inasmuch as the order of the

commission only requires the appellees to desist from charging higher rates to the former that to the latter.

J. WARD GURLEY,
U. S. Attorney for the Eastern District of Louisiana.
L. A. SHAVER,
Solicitor for Interstate Commerce Commission.

351 United States circuit court of appeals, fifth circuit.

November term, 1898.

[Extract from minutes.]

APRIL 12, 1899.

THE INTERSTATE COMMERCE COMMISSION, appellant,
vs.
THE WESTERN & ATLANTIC RAILROAD CO., The Louisville & Nashville Railroad Company, et als.
No. 750.

Order allowing appeal.

In this cause the Interstate Commerce Commission, by J. Ward Gurley, United States attorney, and L. A. Shaver, esq., solicitor of said commission, under the direction of the Attorney-General of the United States, having made its application in writing for an appeal from the final decree therein, rendered on the 21st day of March, 1899, to the Supreme Court of the United States, and the said Interstate Commerce Commission, being a department of the Government, and it appearing that the matter in dispute in said cause exceeds the sum of $5,000.00, exclusive of costs, it is therefore ordered that said appeal be, and the same is hereby, granted and made returnable on the 12th day of May, 1899.

DON A. PARDEE,
Circuit Judge.

APRIL 12th, 1899.

352 United States circuit court of appeals, fifth circuit.

November term, 1898.—Filed March 21, 1899.

THE INTERSTATE COMMERCE COMMISSION, appellant,
v.
THE WESTERN AND ATLANTIC RAILROAD Company et al., appellees. } No. 750.

SAME
v.
THE CLYDE STEAMSHIP COMPANY, THE Georgia Railroad, et als. } No. 751.

SAME
v.
THE CLYDE STEAMSHIP COMPANY, THE Atlantic & West Point Railroad Company, and The Western Railway of Alabama, et als. } No. 752.

Appeals from the circuit court of the United States for the northern district of Georgia.

Before Pardee and McCormick, circuit judges, and Parlange, district judge.

McCORMICK, circuit judge, delivered the opinion of the court.

The three above-styled causes present substantially similar questions of fact and questions of law. They were heard together in the circuit court and in this court. They were severally originated by petitions filed before the Interstate Commerce Commission against the respective appellees by the railroad commission of Georgia. These petitions were filed on October 22, 1891.

The gravamen of the petition in the first named of the above cases was that the appellees charged, collected, and received for freight transportation, by continuous carriage, from the city of Cincinnati
353 and other Ohio River points to the towns and stations of Marietta, Acworth, Cartersville, Kingston, Adairsville, and Calhoun, on the Western and Atlantic Railroad, a greater amount than the amount charged and received for freight carried through the towns and stations just named to the city of Atlanta; that the rate of freight charged to the shorter-distance points is unreasonable and discriminating in its nature, and is in direct violation of section 4 of the act of Congress entitled "An act to regulate commerce," and prays that the defendants therein (appellees here) may be required to answer, and after due hearing and investigation an order may be made commanding them to cease and desist from the violations of the act to regulate commerce.

In the second suit, the same charges and prayer are made as to the rates of the defendants (appellees) from New York and other Eastern cities to points on the Georgia Railroad between Augusta and Atlanta, to wit: Greensboro, Madison, Social Circle, Covington, and Stone Mountain,

being the shorter distance points in that case, and Atlanta the longer distance point.

In the third complaint, the same charges and prayer are made as to the rates of the defendants (appellees) from New York and other Eastern cities to points on the Atlantic and West Point Railroad and the Western Railway of Alabama, between Atlanta and Opelika, to wit: Newnan, Grantsville, Hogansville, La Grange, and West Point, being the shorter distance points in that case, and Opelika the longer distance point.

The Interstate Commerce Commission, after due service of these complaints on the defendants therein, and after testimony taken and argument had in behalf of all parties in interest, made its report and decision November 11, 1892, in which it held in substance in each of the cases that all of the carriers, as presented in the case, are subject to the
354 act to regulate commerce, and to the jurisdiction of the Interstate Commerce Commission as to through shipments from Cincinnati, New York, Philadelphia, Boston, and Baltimore; or from any Ohio River or Mississippi River point, or any Atlantic port north of Charleston, and that they had no right to put in the higher rate for the shorter distance, upon their own motion, but should have made application to the Commission for relief under the provisory clause of the fourth section; and are technically not now entitled to make defence to the complaints. After discussing the facts in the first case, the Commission says: "In view of these facts, and others shown in the statement of findings, we hold that the defendants are not, upon the evidence, justified in making the greater charges complained of in this case. But this being the first case since the Louisville & Nashville decision in which the Commission has been called upon to specifically hold that relieving orders must be applied for in this class of cases, we think the carriers should have an opportunity in this case of applying for relief under the proviso of the fourth section, and, if possible, of bringing forward voluntarily, as applicants instead of defendants, additional evidence that may be admissible under such a proceedings as indicated in this opinion. The order will therefore be that the defendants in this case cease and desist, within 20 days after receiving a copy thereof, from charging or receiving any greater compensation in the aggregate for transportation of a like kind of property from Cincinnati or other points called and known as Ohio River points for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta than for the longer distance over the same line in the same direction to Atlanta, the shorter distance being included within the longer distance, or that the defendants make and file with the Commission within the time above specified an application or applications, as the case may require, as provided in the proviso of the fourth section of the
355 act to regulate commerce, for relief from the operation of that section in respect to the prohibition therein contained against charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from Cincinnati and other Ohio River points to the shorter distance points above mentioned than for such transportation over the same line in the same direction for the longer distance to Atlanta, and show cause within 60 days after service of the order why such application for relief should not be granted; and upon such application the evidence already taken in this case may be used.

In case the application for relief shall be denied the order to cease and desist shall stand, and compliance therewith will be required within twenty days after service of the order denying the application." A substantially similar finding and order was made in each of the two other cases.

The appellees did not apply for relief as permitted by the order, and did not change their tariff or rates to the shorter or longer distance points named.

On May 27, 1893, the bills in these cases were exhibited in the circuit court for the northern district of Georgia, and by appropriate averments therein, the proceedings had before the Commission and its decision and order therein, and the failure of the appellees to comply therewith, were presented to the court, and prayer was made that such action and orders be taken as was necessary to secure a speedy hearing and determination of the matters and things stated, and that pending the proceedings a writ of injunction or other proper process, mandatory or otherwise, to restrain the defendants, their officers, servants, and attorneys from further continuing in their violation of and disobedience to the orders of the Commission, be granted, and that upon final hearing such injunction may be made perpetual.

The cases did not come to a speedy hearing. On July 6, 1898,
356 a decree was entered in each case by which the relief sought was refused and the bill dismissed. From those decrees these appeals are taken.

It is manifest from the report and opinion of the Interstate Commerce Commission that these cases were considered and decided by it as cases presenting violations of the fourth section of the act to regulate commerce. The Commission was not therefore called upon to find whether the respective rates in question were reasonable and just or not. For the same reason it was not called upon to find whether the rates charged to the shorter-distance points gave an undue or unreasonable preference or advantage to the longer-distance points, or subjected the shorter-distance points to an undue or unreasonable prejudice or disadvantage in any respect whatever. As underlying the provisions of the fourth section, the relative effect of the respective rates is more or less discussed in the report and opinion of the Commission, but it does not appear to have made, nor to have intended to be understood as making, any finding of fact in reference to these rates that would affect their relations to any section of the act to regulate commerce other than the fourth section, on which its opinion and decision proceeds and rests. Without conceding this, counsel for the appellant contended in the circuit court, and contends in this court, that on applications like these the courts are not limited to a review of the grounds on which the Commission acted, but have and should exercise jurisdiction of the whole subject-matter, and on the law and facts determine whether the tariff of rates complained of is reasonable and just or not, and whether it gives any undue or unreasonable preference to the longer-distance points, or subjects the shorter-distance points to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. The appellees contend that their tariff of rates complained of does not violate the fourth section, because the circumstances

and conditions under which they carry freight to the shorter-dis-
357 tance points and to the longer-distance points are not substantially similar, but are substantially dissimilar. They contend further that their tariff of rates does not violate the third section for substantially the same reason as exempted them from the operation of the fourth section, and that any preference the tariff gives to the longer-distance points, or prejudice or disadvantage in any respect whatsoever to which it subjects the shorter distance points, is not undue or unreasonable, but the just and reasonable result of the substantial dissimilarity in conditions and circumstances under which the freight is carried and delivered to the different points, respectively. They also deny that the rates complained of are unreasonable or unjust, and insist that they are in themselves reasonable and just.

In the case of the Interstate Commerce Commission v. Alabama Midland Railway, 168 U. S., 144, the Supreme Court say: "That competition is one of the most obvious and effective circumstances that make the conditions under which a long and a short haul is performed substantially dissimilar—and as such must have been in the contemplation of Congress in the passage of the act to regulate commerce—has been held by many of the circuit courts. It is sufficient to cite a few of the number: Ex parte Koehler, 31 Fed. Rep., 315; Missouri Pac. Ry. Co., Texas and Pacific Railway, 31 Fed. Rep., 862; Interstate Commerce Commission v. Atchison, Topeka, etc., Railroad, 50 Fed. Rep., 295; Same v. New Orleans and Texas Pacific Railroad, 56 Fed. Rep., 925; Behlmer v. Louisville & Nashville Railroad, 71 Fed. Rep., 835; Interstate Commerce Commission v. Louisville & Nashville Railroad, 73 Fed. Rep., 509. But the question whether competition as affecting rates is an element for the Commission and the courts to consider in applying the provisions of the act to regulate commerce is not an open question in this court.

358 "To prevent misapprehension it should be stated that the conclusion to which we are led by these cases, that in applying the provisions of the third and fourth sections of the act, which makes it unlawful for common carriers to make or give any undue or unreasonable preference or advantage to any particular person or locality, or to charge or receive any greater compensation in the aggregate for the transportation of passengers or of the like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, competition which affects rates is one of the matters to be considered, is not applicable to the second section of the act.

"In order further to guard against any misapprehension of the scope of our decision it may be well to observe that we do not hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the questions of undue or unreasonable preference or advantage, or what are substantially similar circumstances and conditions.

"We are unable to suppose that Congress intended by the fourth section and the proviso thereto to forbid common carriers, in cases where the

circumstances and conditions are substantially dissimilar, from making different rates until and unless the Commission shall authorize them so to do; much less do we think that it was the intention of Congress that the decision of the Commission, if applied to, could not be reviewed by the courts."

The commissioners' report says that the present adjustment of
359 rates to Atlanta is the outcome of severe competition between the lines leading from the competing markets like St. Louis, Baltimore, Cincinnati, etc., and, with some modifications occurring from time to time, has been in effect for a considerable period. While it makes no similar finding with reference to Opelika, showing whether or not the adjustment of rates to that point is the outcome of severe competition either between carrier and carrier or between market and market, its recitals of what the proof shows as to conditions there are to that effect, and the testimony of numerous credible witnesses is clear and pointed to the effect that the adjustment of rates to Opelika is the outcome of controlling competition. It is true that with reference to both points the force of this competition has been recognized by the respective appellees, and its influence has, by agreement between them, been so adjusted as to fix the rates to each of these points; but witnesses showing th'rough competency to testify to the fact state this adjustment of the rates has been brought about and is maintained by the force of the competition bearing upon those points. It is argued by counsel for the appellant that by this agreement as to the rates the carriers have contracted to not compete. But it is not shown or reasonably suggested on what ground or for what consideration the competing carriers consented to accept the lower rate to these longer distance points than they charge to the shorter distance points if they could just as well have agreed and contracted to charge as great or greater rates to the longer than to the shorter distance points.

A careful consideration of the circumstances and conditions shown by the proof constrains to the conclusion that the difference in the circumstances and conditions have caused the difference that is complained of in the rates. The commission, in its report, says: "Competition has not forced rates down at Kingston, Marietta, and Cartersville."
360 These are junction points, reached by more than one railroad. No railroad other than the Western and Atlantic runs to Calhoun, Adairsville, or Acworth. Some of the shorter distance points between Augusta and Atlanta, and between Atlanta and Opelika, have more than one railroad reaching them, but the proof shows that at none of them is there such competition as affects rates; or, to use the language of the commission, "as has forced rates down."

In these cases the circuit court found that the rates complained of do not violate the fourth section of the act to regulate commerce; that the lesser charge to the longer distance point results from dissimilar circumstances and conditions brought about by competition, and does not give a preference which is undue and unreasonable to the longer distance point, and that there is nothing whatever in the evidence or in the record from which it can be justly concluded that the rates to any of the local points named are not reasonable and just. (88 Fed. Rep., 186.)

The most careful consideration of the testimony brought up in the

records in these cases does not disclose any evidence that was offered by the appellant in the circuit court tending to show that the rates, separately considered, to the respective points are not reasonable and just, and the replies that were drawn by a most skillful cross-examination from the witnesses called by the appellees do not show or tend to show that the rates to the respective points are not reasonable and just. On the contrary the great volume of testimony given by these witnesses (who show full competency to testify) is directly and clearly to the effect that the rates are reasonable and just. One witness gives as a reason for this opinion (for the subject is hardly susceptible of better proof than the opinion of experts) that the rates
361 are fixed upon the lowest obtainable combination of the rates to competitive points with the local rates therefrom to the noncompetitive points, so that the traffic to the noncompetitive stations has the benefit of whatever reduction competition has effected in the adjustment of rates to the competitive points; and that the rates are lower than prevail in some of the other sections of the country, and lower than can be obtained by any other means of transportation, and are not higher than are charged from other points of distribution to stations on other railroads under similar circumstances and conditions. And another witness says the rates are "just and reasonable, in that they are not unjustly or unreasonably high. They are lower than the rates at which the property can be transported by any other means of transportation. They have not prevented the shipment of freights. Traffic has been shipped with profit under these rates. They are just, relative to rates to other points in the State of Georgia similarly situated. These rates are based upon rates to Chattanooga, which are controlled and fixed by competition, and added to the rates from Chattanooga to the several stations, which are the same for the same distance as the rates fixed by the railroad commission of Georgia." These reasons do not convince the counsel for the appellant, but appear to us to have weight. The testimony also shows (and it has become largely a matter of common knowledge) that competition between carriers, whether by rail or water, not only affects the rate for which freight can be carried, but also substantially affects the circumstances and conditions under which the transportation of freight is conducted. By way of illustration, one witness says it will and does require a road to run trains at a high rate of speed. It requires the carrier frequently to have cars loaded at a less weight per car.
362 It often requires the carrier to take a part of a carload without waiting to fill up the car. It will frequently require the road to be less rigid in resisting the payment of claims made against it, the payment of which the company might successfully resist, and would stoutly contest, at a noncompetitive point. The doing of all these things, and many more like them not necessary to be done in the absence of competition, is rendered necessary by the presence of such competition to the degree in which it is present, in order that the carrier may get its share of the business at the competitive point. The testimony shows that the rates of freight from Ohio River points to Atlanta are entirely controlled by competition. The points between Chattanooga and Atlanta get the benefit of the strong competition at Chattanooga, but there is not at those points the same force of competition which controls the rates at Atlanta.

The testimony of the witnesses and the report of the commission show that Opelika is not situated on any water course, and is at the intersection of only two railways, but that it is affected by certain conditions which happen to exist at that point, and which are not to be found at ordinary local stations or even at ordinary junctions. With its two railroads as terminal carriers it is connected at comparative short distances with numerous and extensive systems of rail and water carriage, which make it possible for freight to reach Opelika from the Northern and Eastern ports, and from Ohio River points, by many different routes, the strong competition between which different carriers comes to a focus at Opelika. Counsel for the appellees conceded that in taking into consideration competition as one of the circumstances and conditions affecting transportation, care must be had to keep within reasonable limits. He submits that, in these cases, the reasonable limits are three: (1) that
363 the rates charged to the shorter distance points must not be unjust or unreasonable within the purview of the first section of the act to regulate commerce; (2) that the competition at the longer distance points must be such as subserves the public interest; it must also be real, and such as to compel the acceptance by the carriers of the rates which they do accept to those points; and (3) that the rates to the longer distance points must yield a profit (though it may be very small) over the additional cost of the movement of the competitive traffic. He contends that, if the rates to the shorter distance points are just and reasonable, the appellees ought not to be required to reduce them, even though such reduction may be necessary to place the shorter distance points upon a "rate equality" with the longer distance points, because such a reduction in rates to the shorter distance points involves a serious reduction in the revenue which the appellees derive from the present rates to those points. If the competition at the longer distance points is real and such as to affect rates, the carrier must accept those rates or abandon the competitive traffic. If the competitive rates are something more than the additional cost of the movement of the traffic it is to the interest of the carrier and to the interest of the public that the carrier should be allowed to compete for the traffic. The profit, however small, to the extent that it inures, increases the revenues of the carrier, and has a tendency to reduce local rates and to improve the local service. There may be a wide difference between a rate or amount of compensation that would give full remuneration for the service in carrying the competitive traffic and that remuneration therefor which the competitive conditions will allow the carrier to receive. The full measure of reasonable remuneration to the appellees for the carriage of competitive freight to Atlanta would require a rate sufficient to pay not only the additional cost of moving the competitive traffic, but also that proportion of operating expenses, fixed charges, and reasonable profit to the owners of the carrier lines which the tonnage of the competitive traffic bears to the total freight ton-
364 nage of the carrier. And that rate would, doubtless, be applied and enforced if the circumstances and conditions permitted it to be done. But as no higher rate than a full compensatory one should be applied and enforced under the most favorable circumstances and conditions, it is manifest that it can not be applied to traffic that is subject to severe competitive conditions.

There is in these cases no complaint by the appellant, or by any of the witnesses whom the appellant called, that the rates to Atlanta, Opelika, Chattanooga, Augusta, and other competitive points are too low. There is a suggestion by the Commission, that the average of the rate per ton per mile tends to show that such complaint could not well be made, and that these rates are at least reasonably high. And the testimony offered by the appellees shows that, considering the competitive conditions in operation at those points, the rates to those points are reasonably remunerative. On the basis of this evidence it is earnestly contended by counsel for the appellant that the rates at the longer distance points being shown to be reasonably remunerative, and the rates at the shorter distance points being admitted to be higher, the latter must, of logical necessity, be found to be unreasonably high, and therefore unreasonable and unjust, and such as give an undue preference to the longer distance points, and subject the shorter distance points to an undue and unreasonable prejudice and disadvantage. It will be perceived that this argument excludes all consideration of the force of competition, and ignores its presence at the longer distance points and its comparative absence from the shorter distance points. What is a reasonable action, or a reasonably remunerative rate for carrying at a given time and place, necessarily has relation to the circumstances and conditions bearing upon the actor or upon the carrier at the time and place. The appellant does not say—and the railroad commission of Georgia did not say, and none of the witnesses called by the appellant in the cases have said—that the rates at any of the points, considered separately, are too high or are too low, or are not reasonable and just. The burden of their complaint is that the relation between the rates is wrong. It is not insisted or even suggested
365 that the rates to the longer distance points should or can be raised.

Nor is it now asked that the rates to the shorter distance points shall be lowered. It is asked only that the appellees shall be required to cease and desist from charging more for the shorter than for the longer haul. This requirement seems to have possible relation only to the fourth section of the act. It can not adequately meet the requirements of the first and third sections if either of them is violated by the conduct from which the appellees are required "to cease and desist." If the mere charging of a greater rate for the shorter than for the longer haul gives an undue and unjust preference to the longer distance points and subjects the shorter distance points to any undue prejudice or disadvantage, it is difficult to see how the charging exactly the same rate for the shorter haul that is charged for the longer shall escape condemnation.

The appellees are held to be subject to the act and to the jurisdiction of the commission, because by express or implied agreement they have consented to carry freight on through bills of lading from points beyond the State of Georgia to points within that State. The sixth section of the act to regulate commerce, as originally passed and as since amended, recognizes the existence and validity of such contracts or agreements, express or implied, and makes certain provisions with reference to the action of the connecting carriers parties thereto. The act does not, however, require such connecting carriers to enter into such agreements. Nor does it authorize the commission to require through routing and billing, or to establish and fix through rates over connecting lines. (Gulf, &c.,

Railway Company v. Miama Steamship Company, 52 U. S. App., 732; New York, New Haven and Hartford Railroad Company v. Platt, 7 Interstate Com. Rep., 323.) It does not authorize the commission to fix rates in any case. (Cincinnati, New Orleans and Texas Pacific Railway Company v. Interstate Commerce Commission, 162, U. S., 184.)

The railroad commission of Georgia is authorized and required to fix rates. (Sec. 6, act 269, part 1, title 12, of Georgia, 1878-
366 1879.) And that commission has fixed a schedule of just and reasonable rates, which is called the standard tariff. Only three roads—the Western and Atlantic, the Rome Railroad (operated by the Western and Atlantic), and the Georgia Railroad—are required to observe this standard tariff of rates. All of the other roads in the State are allowed certain percentages of increase, except on classes C, D, F, J, and P, and are allowed to charge rates from ten to fifty per cent higher than the standard tariff rates. The Western and Atlantic Railroad, extending from Chattanooga to Atlanta, does not lie wholly within the State of Georgia, but being owned by the State of Georgia, and now operated by the Western and Atlantic Railroad Company under a lease from the State, is subject throughout its whole extent to the rates imposed by the Georgia commission. The competition which affects rates is at least as severe at Chattanooga as it is at Atlanta. Some of the witnesses depose that it is stronger at Chattanooga, by reason of the influence there of the Tennessee River. Various systems of connecting lines lying north and west of Chattanooga are affected by this strong competition, which has its controlling influence throughout the whole length of their lines from Ohio River points to Chattanooga on all freight carried to that point or to be carried through it; and hence they can not claim more or be forced to receive less for carriage to that point than the competitive conditions there require.

For like reasons, the Western and Atlantic Railroad Company can not obtain more for the carriage of this competitive freight from Chattanooga to Atlanta than the difference between the rates to Chattanooga and the rates to Atlanta, which have been fixed by competition beyond the control or appreciable influence of the Western and Atlantic Railroad. Therefore, as to that competitive traffic, this road has no option as to the rate at which it will take the traffic, and must either decline to receive the freight or must accept for its carriage the difference between the two rates, which are fixed by the controlling competition. As
367 to the intermediate stations on the Western and Atlantic Railroad, that carrier is under not the same duress, but feels its force to the extent that for carrying the competitive freight in question from Chattanooga to Marietta it can not charge the full rate allowed by the Georgia commission, for if it insisted on doing so the freight could and would go by another route to Atlanta; and thus, instead of getting a haul of one hundred and seventeen miles, the distance from Chattanooga to Marietta, the Western and Atlantic could get only a haul of twenty-one miles, the distance from Atlanta to Marietta.

Therefore, in fixing the rates to these intermediate points the through rate to that competitive point which, combined with the local rate from the competitive point to the point of destination, will give the lowest through rate to the noncompetitive point, controls. As the noncompeti-

tive point thus gets the benefit of the lowest rate to any of the neighboring competitive points, and as the carriage of the competitive traffic to the respective competitive points is renumerating to the carriers to an extent that more than pays the expense of moving the competitive traffic, it is difficult to perceive how the noncompetitive points are subject to any undue or unreasonable prejudice or disadvantage by this scheme of rate making.

Our conclusion is that the circuit court did not err in refusing to enforce the orders of the commission in these cases, and, therefore, the decrees of that court from which these appeals are taken are affirmed.

368 United States circuit court of appeals for the fifth circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 368 pages, numbered from a to 367, inclusive, contain a true copy of the record upon which the cause was tried in the United States circuit court of appeals for the fifth circuit, and of all proceedings had, including the opinion of the court in the case of the Interstate Commerce Commission, appellant, vs. The Western & Atlantic Railroad Company et als., appellees, No. 750, as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 8th day of May, A. D. 1899.

[SEAL.] J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

369 *Citation on appeal.*

The United States of America, fifth judicial circuit.

The President of the United States to The Western & Atlantic Railroad Company et al., or to Ed. Baxter, their solicitor of record, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C., within 30 days from the date hereof, pursuant to the appeal sued out and filed in the clerk's office in the United States circuit court of appeals for the fifth circuit, in the cause wherein the Interstate Commerce Commission was appellant, and you were appellees, to show cause, if any there be, why the decree rendered against the said Interstate Commerce Commission, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done in that behalf.

Witness, the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit, this the 12th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

DON A. PARDEE,
Circuit Judge.

I hereby accept service of the above citation.

ED. BAXTER,
Solicitor for Appellees as shown of Record.

370 (Indorsed:) No. 750. United States circuit court of appeals, fifth circuit. The Interstate Commerce Commission, appellant, vs. The Western & Atlantic Railroad Co. et al., appellees. Citation on appeal. Filed April 27, 1899. J. M. McKee, clk. J. Ward Gurley, U. S. atty.; L. A. Shaver, solicitor.

371 In the Supreme Court of the United States. October term, 1899.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *vs.* THE CLYDE STEAMSHIP COMPANY, THE GEORGIA Railroad Company, et al.	No. 307. (No. 751 in circuit court of appeals.)
THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *vs.* THE WESTERN & ATLANTIC RAILROAD COMPANY et al.	No. 308. (No. 750 in circuit court of appeals.)
THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *vs.* THE CLYDE STEAMSHIP COMPANY, THE ATLANTA & West Point Railroad Company, the Western Railway Company of Alabama, et al.	No. 309. (No. 752 in circuit court of appeals.)

Stipulation as to parts of record to be printed.

It is stipulated between the attorneys for the appellant and the appellees in the above stated cases that the following portions of the records in said cases be printed in the record in this court in case 308 only, and be omitted in printing the records in this court in cases 307 and 309, to wit:

372 1. The report and opinion of the Commission, which is the same in all three cases.

2. The opinion of the circuit court, which is the same in said three cases.

3. The opinion of the circuit court of appeals, which is the same in said three cases.

4. The stipulation entitled "Stipulation of counsel relative to certain testimony to be used in cases Nos. 524, 525, and 526," and which was entered into in all three cases. Said stipulation appears on pages 94 and 95 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

5. The "Articles of association of the Southeastern Freight Association," which appear on pages from 262 to 266, inclusive, in the record in the circuit court of appeals in said case No. 308.

6. "An act to provide for the regulation of railroad freight and passenger tariffs," &c., in the State of Georgia, which appears in the record in the circuit court of appeals in said case No. 308, on pages from 314 to 321, inclusive.

7. The matter commencing with the words "Exhibit No. 6, filed by J. M. Brown," which embraces "Freight tariff classes—percentages," and also "Classified list of railroads in Georgia," which appears on pages from 305 to 308, inclusive, in the record in the circuit court of appeals in said case No. 308.

373 8. The assignment of errors, which is the same in all three cases.

9. The matter entitled "The Southern States Freight Association. Classified statement of tonnage from points on and beyond the Ohio and Mississippi rivers and from and via Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield, and Riverton, Ala., to Atlanta, Ga., during the year ended March 31st, 1893," which appears on page 267 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

10. The matter entitled "The Southern States Freight Association. Statement of tonnage from the Eastern seaboard and interior points in New England, New York, Pennsylvania, Maryland, Delaware, and West Virginia, to Atlanta, Ga., during the year ended March 31st, 1893," which appears on page 268 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

11. The matter entitled "Statement of average receipts per ton per mile, etc., of various railroads," which appears on pages 323 and 324 of the record in the circuit court of appeals in said case No. 308, said case being numbered 750 in that court.

L. A. SHAVER,
Counsel for Commission.

ED. BAXTER,
Counsel for Carriers.

374 (Indorsed:) File No., 17421, 17422, 17423. Supreme Court U. S., October term, 1899. Term Nos., 307, 308, & 309. The Interstate Commerce Commission, appellant, vs. The Clyde Steamship Co. et al., The Western & Atlantic R. R. Co. et al., and The Clyde Steamship Co. et al. Stipulation as to parts of records to be printed. Filed March 8, 1900.

(Indorsement on cover:) File No., 17422, U. S. C. C. of appeals, 5th circuit. Term No., 308. The Interstate Commerce Commission, appellant, vs. The Western & Atlantic Railroad Company et al. Filed May 25, 1899. Received office Supreme Court of U. S., May 11, 1899.

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